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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 28 जून, 2017

का.आ. 1579.—केन्द्र सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए शिमला स्थित हिमाचल प्रदेश उच्च न्यायालय में दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा अन्वेषित मामलों में तथा इनसे उत्पन्न प्रासंगिक अन्य मामलों अभियोजन, अपील अथवा पुनरीक्षण का संचालन करने के लिए श्री अंशुल बंसल, अधिवक्ता को दिल्ली विशेष पुलिस स्थापना (केन्द्रीय अन्वेषण ब्यूरो) में उनकी नियुक्ति की तारीख से तीन वर्षों के लिए अथवा अगले आदेशों तक, जो भी पहले हो, विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/06/2017-ए.वी.डी.-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**(Department of Personnel and Training)**

New Delhi, the 28th June, 2017

S.O. 1579.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No.2 of 1974), the Central Government hereby appoints Shri Anshul Bansal, Advocate as Special Public Prosecutor for the Delhi Special Police Establishment (Central Bureau of Investigation) in the Himachal Pradesh High Court at Shimla for conducting the prosecution, appeals, revisions or other matters arising out of the cases investigated by the Delhi Special Police Establishment (CBI) for a period of three years from the date of appointment or until further orders, whichever is earlier.

[F. No. 225/06/2017-AVD-II]

S. P. R. TRIPATHI, Under Secy.

विद्युत मंत्रालय

नई दिल्ली, 28 जून, 2017

का.आ. 1580.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में विद्युत मंत्रालय के प्रशासनिक नियंत्रणाधीन एनटीपीसी लिमिटेड के सोलापुर सुपर थर्मल पावर प्रोजेक्ट, ग्राम - फतेहावादी, पोस्ट-होटगी स्टेशन, तालुका साउथ सोलापुर, जिला-सोलापुर-413215 (महाराष्ट्र) तथा तालचेर सुपर थर्मल पावर स्टेशन, पोस्ट-दीपशिखा, जिला - अंगुल -759147 (ओडिशा), जिनके 80 प्रतिशत कर्मचारीवृंद ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है।

[सं. 11017/10/2013-हिंदी]

अंजू भल्ला, संयुक्त सचिव (प्रशा.)

MINISTRY OF POWER

New Delhi, the 28th June, 2017

S.O. 1580.—In pursuance of Sub Rule (4) of the Rule 10 of the Official Languages (Use of Official Purpose of the Union) Rules, 1976, the Central Government hereby notify Solapur Super Thermal Power Project, Village Fatatewadi, P.O. Hotgi Station, Taluka South Solapur, Distt: Solapur, Maharashtra-413 215 and Talcher Super Thermal Power Station, P.O. Deepshikha, Distt : Angul, Orissa-759-147 of the NTPC Ltd. Under the administrative control of Ministry of Power, where 80% of the staff have acquired working knowledge of Hindi.

[No. 11017/10/2013-Hindi]

ANJU BHALLA, Jt. Secy. (Adm.)

कोयला मंत्रालय

नई दिल्ली, 3 जुलाई, 2017

का.आ. 1581.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी, भारत के राजपत्र, भाग II, खंड 3, उप-खंड (ii), तारीख 2 जून, 2017 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का. आ. 1771(अ), तारीख 31 मई, 2017 के प्रकाशन पर, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) और भूमि में या उस पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप से केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है कि साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, डाकघर संख्या 60, जिला- बिलासपुर-495006 (छत्तीसगढ़) (जिसे इसमें इसके पश्चात् सरकारी कम्पनी कहा गया है), ऐसे निबंधनों और शर्तों का जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिये तैयार है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त भूमियों में या भूमियों पर के सभी अधिकार, तारीख 2 जून, 2017 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने की बजाय, निम्नलिखित निबंधनों और शर्तों के अधीन, उक्त सरकारी कम्पनी में निहित हो जाएंगे, अर्थात् :-

- (1) सरकारी कम्पनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;
- (2) उक्त सरकारी कम्पनी द्वारा शर्त (1) के अधीन, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजन के लिये उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा तथा ऐसे किसी अधिकरण और ऐसे अधिकरण की सहायता करने के लिये नियुक्त व्यक्तियों के संबंधों में उपगत सभी व्यय, सरकारी कम्पनी द्वारा वहन किये जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिये या उसके संबंध में सभी विधिक कार्यवाहियों जिसके अधीन अपील भी है, के संबंध में, सभी व्यय भी, इसी प्रकार उक्त सरकारी कम्पनी द्वारा वहन किये जायेंगे;
- (3) सरकारी कम्पनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में, क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमियों में या उस पर के अधिकारों के संबंध में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो ;
- (4) सरकारी कम्पनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमियों और अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी ; और
- (5) सरकारी कम्पनी, ऐसे निदेशों और शर्तों का, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमियों के विशिष्ट क्षेत्रों के लिये दिए जाएं या अधिरोपित की जाए, पालन करेगी।

[फा. सं. 43015/26/2017—एलएआईआर]

आर. एस. सरोज, अवर सचिव

MINISTRY OF COAL

New Delhi, the 3rd July, 2017

S.O. 1581.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 1771(E), dated the 31st May, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 2nd June, 2017 issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the lands and all rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas the Central Government is satisfied that the South Eastern Coalfields Limited, Seepat Road, P. B. No. 60, District-Bilaspur-495006, Chhattisgarh (hereinafter referred to as the Government company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby direct that all the rights in or over the said lands so vested shall with effect from the 2nd June, 2017 instead of continuing to so vest in the Central Government, shall vest in the Government company, subject to the following terms and conditions, namely:—

- (1) the Government company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like as determined under the provisions of the said Act;
- (2) a Tribunal shall be constituted under section 14 of the said Act for the purpose of determining the amounts payable to the Central Government by the Government company under condition (1), and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the said Tribunal shall be borne by the Government company and similarly, all expenditure incurred in respect of all legal proceedings, including appeals, for or in connection with the rights in or over the said lands, so vested, shall also be borne by the Government company;
- (3) the Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said lands so vested;
- (4) the Government company shall have no power to transfer the said lands and the rights to any other persons without the prior approval of the Central Government; and
- (5) the Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said lands as and when necessary.

[F. No. 43015/26/2017—LAIR]

R. S. SAROJ , Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 22 जून, 2017

का.आ. 1582.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पंजाब राज्य में गांव झुगियां, जिला: शहीद भगतसिंह नगर से हिमाचल प्रदेश के गांव पेखुबेला, जिला: उना तक पेट्रोलियम उत्पादों के परिवहन के लिए इंडियन ऑयल कार्पोरेशन लिमिटेड द्वारा पीएजेपीएल- उना ब्रांच पाइपलाइन बिछाई जानी चाहिए।

और, केन्द्रीय सरकार को यह प्रतीत होता है कि ऐसी पाइपलाइन बिछाने का प्रयोजन के लिए ऐसी भूमि जिसके भीतर पाइपलाइन बिछाई जाने का प्रस्ताव है और जो इस अधिसूचना से उपाबद्ध अनुसूची में वर्णित है, के उपयोग के अधिकार का अर्जन करना आवश्यक है।

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है।

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि से हितबद्ध है, उक्त अधिनियम, की धारा 3 की उपधारा (1) के अधीन जारी की गयी अधिसूचना से युक्त भारत के राजपत्र की प्रतियां साधारण जनता को उपलब्ध करा दिये जाने की तारीख से इक्कीस दिनों के भीतर, उसमें उपयोग के अधिकार का अर्जन या भूमि के नीचे पाइपलाइन बिछाए जाने के संबंध में आक्षेप, लिखित रूप में श्री देवराज शर्मा, सक्षम प्राधिकारी, इंडियन ऑयल कार्पोरेशन लिमिटेड, (पाइपलाइन प्रभाग) पीएजेपीएल- उना ब्रांच पाइपलाइन परियोजना, 346, कमला कुंज, डी. सी. कालोनी, उना (हिमाचल प्रदेश)-174303 को कर सकेगा।

अनुसूची

जिला - उना

राज्य - हिमाचल प्रदेश

क्र. सं.	तहसील का नाम	गांव का नाम	हदबस्त नं.	मुरब्बा// किला तथा खसरा सं.	क्षेत्रफल		
					हेक्टेयर	एयर	वर्ग मीटर
1	2	3	4	5	6	7	8
1	हरोली	बाथडी	476	1306 रास्ता	00	00	32
				997 रास्ता	00	00	50
				1300	00	08	33
				1301	00	00	20
				998	00	14	58
				1279	00	12	67
				1280	00	02	93
				1037	00	18	76
				1036	00	00	58
				1038	00	06	35
				1039	00	03	70

1040	00	01	25
1043	00	11	60
1061	00	10	68
1073	00	01	91
1071	00	05	30
1072	00	04	31
1070	00	00	20
1069	00	00	72
1068	00	00	20
1076	00	09	13
1077	00	01	03
1135	00	00	55
1133	00	06	35
1134	00	07	26
1125	00	06	72
1124	00	00	54
1121	00	04	10
1120	00	09	99
1117	00	04	22
1116	00	07	95
930 रास्ता	00	00	79
929	00	05	36
928	00	02	51
927	00	01	52
60	00	00	18
61	00	00	42
62	00	04	00
79	00	00	24
80	00	02	67

			81	00	02	23
			82	00	10	25
			104	00	02	62
			103	00	03	24
			102	00	00	77
			101	00	07	15
			100	00	00	93
			116	00	10	23
			122	00	05	12
			136	00	00	16
			125	00	04	81
			124	00	00	20
			127	00	02	90
			133	00	00	96
			134	00	01	74
			132	00	11	71
			148	00	00	20
			301 रास्ता	00	00	57
			25	00	00	17
			302	00	57	56
2	हरोली	केलुवा	3132	00	03	98
			3130	00	01	94
			3128	00	05	58
			3127	00	04	66
			3039	00	01	81
			3043	00	09	50
			3041	00	00	97
			3042	00	07	49
			3060	00	01	59

3055	00	02	40
3059	00	06	73
3097	00	04	40
3092	00	04	02
3091	00	01	66
3093	00	02	81
3090	00	01	54
3088	00	06	12
3089	00	00	20
3085	00	03	95
3084	00	04	82
3083	00	14	46
3302	00	10	86
2920	00	01	34
2919	00	03	68
2931	00	02	95
2933	00	01	58
2934	00	02	54
2917	00	01	30
2935	00	01	09
2916	00	02	40
2936	00	01	30
2940	00	01	39
2947	00	00	83
2946	00	00	26
2948	00	12	55
2950	00	00	94
2952	00	05	93
2953	00	04	61

				2954	00	03	08
				2643	00	00	20
				2645	00	01	69
				2646	00	12	28
				2651	00	03	03
3	हरोली	बाथू	475	1892	00	00	20
				1895	00	00	57
				1895/1	00	01	66
				1894	00	00	20
				1897	00	11	50
				1898	00	00	28
				1901	00	06	11
				1901/1	00	00	20
				1911	00	03	53
				1910	00	03	79
				1909	00	00	77
				1912	00	06	28
				1908	00	03	51
				1860	00	01	28
				1861	00	01	73
				1867	00	04	43
				1865	00	02	78
				1862	00	00	20
				1864	00	01	82
				1854	00	04	14
				1855	00	07	37
				1824	00	05	52
				1990	00	00	25
				1822	00	02	37

1823	00	02	03
1819	00	01	73
1821	00	06	02
1817 रास्ता	00	00	73
1801 रास्ता	00	00	38
1810	00	00	96
1809	00	01	93
1808	00	04	36
1807	00	04	36
1560	00	04	13
1559	00	03	15
1553	00	01	03
1563	00	03	03
1562	00	02	63
1564	00	00	37
1566	00	08	54
1567	00	06	22
1590	00	00	51
1586	00	05	69
1581	00	10	89
1582	00	02	13
1579	00	04	11
1502	00	19	59
1499	00	11	43
1497	00	03	96
1498	00	04	93
1493	00	07	35
1666	00	02	27
1667	00	02	38

				1668	00	03	25
				1669	00	01	43
				1485	00	00	31
				1670	00	03	18
				1671	00	03	82
				1672	00	01	62
				1673	00	00	20
				1676	00	01	41
				1677	00	00	87
				1679	00	00	28
				1680	00	00	58
				1681	00	06	23
				1684/1	00	03	16
4	हरोली	बट खुर्द	474	1376	00	00	82
				1377	00	02	78
				1384	00	04	01
				1385	00	00	20
				1396	00	09	88
				1395	00	00	20
				1397	00	01	53
				1442	00	00	52
				1404	00	02	91
				1405	00	01	96
				1406	00	02	05
				1403	00	00	20
				1407	00	00	20
				1408	00	00	20
				1409	00	02	15
				1412	00	00	67

1411	00	01	01
1410	00	00	66
1441	00	02	41
1440	00	03	20
1439	00	02	66
1438	00	00	20
1437	00	00	20
1456	00	00	20
1457	00	05	05
1454	00	02	92
1468	00	01	03
1467	00	00	61
1466	00	00	89
1469	00	03	24
1465	00	00	70
1470	00	02	19
1471	00	00	20
1482	00	01	82
1481	00	02	47
1486	00	01	97
1503	00	06	56
1490	00	00	20
1504	00	00	77
1510	00	01	59
1509	00	00	92
1508	00	01	46
1505	00	00	34
1507	00	02	51
1313	00	02	96

1314	00	02	48
1318	00	01	68
1317	00	01	47
1320	00	01	27
1321	00	01	40
1323	00	03	71
1324	00	00	20
1288	00	01	29
1293	00	01	27
1290	00	00	56
1289	00	01	48
1286	00	00	20
1287	00	00	29
1291 रास्ता	00	00	44
1292 रास्ता	00	00	20
1262	00	02	01
1261	00	00	39
1250	00	00	20
1249	00	02	59
1246	00	03	39
1243	00	00	20
1242/1	00	00	75
1242	00	01	04
1241	00	00	80
1239	00	02	100
1236	00	00	82
1238	00	01	02
1237	00	00	83
1232	00	02	16

				1231	00	01	25
				1230	00	01	11
				2174/1688	00	00	61
				2173/1688	00	00	37
				2172/1688	00	00	99
				1682	00	00	98
				1690	00	04	47
				1691	00	03	39
				1692	00	01	51
				1696	00	01	85
				1718	00	02	42
				1719	00	00	28
				1697	00	00	20
				1710	00	04	08
				1717	00	00	20
				1707	00	00	20
				1708	00	01	30
				1709	00	01	95
				1711	00	01	18
5	हरोली	बट कला	473	678 // 21/3	00	05	61
				678 // 21/4	00	02	81
				678 // 20/2	00	06	02
				678 // 20/1	00	03	25
				678 // 11/2	00	07	76
				678 // 11/1	00	02	65
				678 // 10/1	00	01	35
				682 रास्ता	00	00	60
				678 // 10/2/2	00	02	10
				678 // 10/2/1	00	03	21

				678 // 1/2	00	00	56
				679 // 6/4/1	00	00	65
				679 // 6/3	00	01	88
				679 // 6/1	00	00	50
				679 // 5/3	00	03	08
				679 // 5/2	00	05	84
				679 // 5/1	00	00	20
				669 // 25/3	00	01	50
				669 // 25/2	00	07	85
				669 // 25/1	00	00	45
				669 // 16/1	00	09	67
				669 // 15/2	00	01	39
				669 // 17/1	00	00	72
6	हरोली	टहलीवाल निचला	472	154	00	00	98
				168	00	00	90
				169	00	13	73
				171	00	12	46
				175	00	00	20
				185	00	00	57
				189	00	18	76
				201 नाला	00	01	13
				223	00	03	91
				222	00	01	44
				221	00	00	84
				224	00	00	20
				226	00	03	70
				226/1	00	05	01
				227	00	14	93

			388	00	00	27
			228 रास्ता	00	00	74
			369	00	00	20
			253	00	03	65
			312 रास्ता	00	01	92
			363	00	01	57
			254	00	00	69
			255	00	00	20
			362	00	11	74
			360	00	20	17
			317	00	20	09
			318	00	13	14
			316	00	02	05
			315	00	03	15
			314/2	00	03	33
			319	00	00	33
			314/1	00	03	14
			313	00	00	50
7	हरोली	टहलीवाल उपरला	472			
			479	00	01	45
			478	00	01	88
			477 रास्ता	00	01	08
			470	00	10	22
			475	00	01	42
			476	00	06	94
			414	00	03	86
			413	00	03	02
			414/1	00	02	69
			515	00	00	20

				411 रास्ता	00	00	39
				409	00	00	23
				407	00	09	99
				386	00	00	20
				389	00	02	83
				390	00	07	60
				390/1	00	03	39
				391	00	07	22
				377	00	00	89
				376	00	05	57
				375	00	03	50
				371	00	00	70
				368	00	00	20
				367	00	10	08
				366	00	00	20
				359	00	01	68
				358	00	00	30
				360	00	03	89
				361	00	04	14
				353 रास्ता	00	00	58
				339	00	08	42
				307	00	10	56
				338	00	03	47
				309	00	04	02
				310	00	03	93
				298	00	06	86
8	हरोली	मानुवाल	471	2552	00	01	07
				2562	00	04	28
				2551	00	04	02

2548	00	01	25
2549	00	00	38
2550	00	00	22
2564	00	03	100
2567	00	02	11
2568	00	00	50
2570	00	03	61
2571 रास्ता	00	00	77
2572	00	01	76
2982	00	01	30
2983	00	00	20
2981	00	00	20
2574	00	00	29
2577	00	01	94
2980	00	06	41
2578	00	00	46
2580	00	00	53
2582	00	00	64
2583	00	00	54
2581	00	00	55
2600	00	01	76
2601	00	01	13
2605	00	00	20
2604	00	00	34
2602	00	00	34
2603	00	00	20
2629	00	03	68
2626	00	02	22
2628	00	00	45

2627	00	00	20
2651	00	01	71
2650	00	02	34
2653	00	00	20
2652	00	00	20
2655	00	03	17
2656	00	00	20
2659	00	01	81
2660	00	01	23
2654	00	00	20
2662	00	00	20
2661	00	00	31
2663	00	00	72
2675	00	00	37
2674	00	01	02
2664	00	00	20
2671	00	00	20
2672	00	01	40
2673	00	00	91
2677	00	02	32
2701	00	00	84
2700	00	00	67
2699	00	00	33
2698	00	00	63
2697	00	00	27
2696	00	02	02
2693	00	03	23
2707	00	00	20
2708	00	00	73

				2709	00	04	12
				2721	00	05	47
				3492/2727	00	00	81
				3499/2730	00	00	96
				2728	00	05	93
				3495/2729	00	00	50
				3496/2729	00	00	25
				2688 रास्ता	00	01	09
9	हरोली	थेह	471	2481 रास्ता	00	00	71
				2126	00	01	18
				2127	00	00	21
				2128	00	01	57
				2129	00	01	25
				2136	00	08	22
				2135	00	02	01
				2138	00	00	34
				2150	00	00	20
				2139	00	00	24
				2140	00	03	45
				2149	00	00	20
				2141	00	00	68
				2142	00	06	23
				2143	00	00	71
				2144	00	00	37
				2145	00	01	52
				2445	00	09	30
				2442	00	00	23
				2443	00	00	29
				2444	00	00	67

2440 रास्ता	00	00	66
2260	00	01	09
2358	00	03	12
2262	00	01	33
2357	00	00	91
2356	00	06	89
2355	00	00	88
2354	00	02	47
2292	00	00	75
2291	00	00	20
2290	00	00	20
2293	00	02	82
2294	00	00	20
2296	00	00	20
2295	00	00	56
2286	00	05	29
2298	00	00	44
2299	00	00	20
2302	00	00	72
2303	00	00	38
2304	00	00	86
2305	00	01	64
2306	00	02	66
2307	00	00	25
2308	00	00	22
2324	00	05	75
2318	00	03	96
2317	00	05	20
2316	00	01	42

				2401	00	02	83
				2402	00	01	36
10	हरोली	नांगल खुर्द	471	2781	00	09	98
				2783	00	04	92
				2785	00	02	20
				2784	00	02	27
				2787	00	07	79
				2789	00	00	20
				2788	00	05	86
				2833	00	00	20
				2823	00	03	35
				2824	00	05	05
				2832	00	02	32
				2822	00	00	20
				2825	00	05	02
				2828	00	02	01
				2827	00	03	71
				2826	00	02	06
				2841	00	14	06
				2943 रास्ता	00	00	81
				2942	00	12	64
				2940	00	03	67
				2939	00	00	81
				2913	00	20	07
				2937	00	02	02
				2935	00	06	82
				2934	00	05	28
				2933	00	00	80
				2932	00	06	24

				2926	00	12	20
				2924	00	00	20
				2925	00	00	82
				2923	00	20	73
				2920	00	20	39
11	हरोली	ललडी	470	6440	00	01	59
				6464	00	00	20
				6439	00	01	35
				6445	00	00	20
				6441	00	04	39
				6442	00	04	33
				6444	00	00	20
				6443	00	03	82
				6459	00	09	19
				6458	00	01	13
				6460	00	00	92
				6457	00	17	17
12	उना	उदयपुर	224	1204	00	34	52
				1203	00	03	23
				1202	00	24	60
				1199	00	13	96
				1198	00	23	62
				1197	00	27	37
				1137	00	00	20
				1138	00	01	54
				1140	00	32	47
				1141	00	09	61
				1245/1155	00	00	55
				1244/1155	00	00	20

				1156	00	01	74
				1160	00	00	22
				1158	00	03	80
				1159	00	15	15
				1173	00	22	79
				953	00	09	68
				1176	00	18	24
				1175	00	00	96
13	उना	फतेहपुर	223	1881 रास्ता	00	00	64
				1880	00	07	55
				1879	00	11	05
				1902	00	00	20
				1903	00	04	94
				1904	00	02	49
				1905	00	02	86
				1908	00	00	20
				1907	00	00	20
				1910	00	02	55
				1909	00	01	25
				1919	00	04	86
				1918	00	01	47
				1915	00	05	49
				1926	00	00	61
				1914	00	00	30
				1927	00	00	30
				1929	00	00	20
				1925	00	01	52
				1928	00	01	60
				1923	00	00	20

1949	00	07	08
1952	00	01	09
1950	00	00	69
1951	00	00	29
1967	00	08	24
1972	00	01	58
1966	00	01	31
1965	00	01	09
1985	00	00	22
1973	00	00	20
1984	00	00	49
1986	00	00	39
1988	00	11	79
1638	00	07	01
1631	00	00	20
1630 रास्ता	00	00	23
1632	00	00	48
1633	00	00	20
1629	00	02	01
1634 रास्ता	00	00	20
1635	00	00	20
1626 रास्ता	00	00	50
1627	00	02	33
1603	00	01	95
1605	00	00	37
1608	00	02	88
1609	00	02	38
1607	00	00	20
1610	00	02	57

				1611	00	02	75
				1612	00	01	53
				1493	00	02	39
				1492	00	00	90
14	उना	नंगड़ा उपरला	222	2463	00	00	21
				2464	00	14	20
				2466 रास्ता	00	02	50
15	उना	नंगड़ा झिकला	222	2169	00	00	25
				2159	00	03	95
				2156	00	02	23
				2155	00	02	64
				2154	00	01	42
				2153	00	01	42
				2112	00	00	58
				1889	00	01	83
				1888	00	00	33
				1887	00	02	68
				1877	00	02	77
				1878	00	00	15
				1879	00	00	20
				1874	00	02	01
				1873	00	01	96
				1872	00	00	46
				1869	00	01	47
				1868	00	00	20
				1867	00	01	86
				1866	00	00	20
				1862	00	01	89

1863	00	00	36
1864	00	00	20
1858	00	00	20
1857	00	01	96
1856	00	01	66
1850	00	03	87
1851	00	00	20
1846 रास्ता	00	00	64
1828	00	02	00
1829	00	18	29
1830	00	04	33
1832	00	00	20
1831	00	00	79
1821	00	02	44
1820	00	02	37
1813	00	00	70
1812	00	01	44
1811	00	02	25
1656	00	00	20
1655	00	01	16
1657	00	03	29
1658	00	03	21
1659	00	02	78
1660	00	01	86
1384	00	01	38
1383	00	00	60
1662	00	01	11
1382	00	01	54
1377 रास्ता	00	00	63

1663	00	00	78
1359	00	02	73
1358	00	01	20
1338	00	01	51
1336	00	02	50
1337	00	00	20
1335	00	00	62
1330	00	00	20
1667	00	00	69
1329	00	00	66
1323	00	01	16
1324	00	01	00
1325	00	02	77
1303	00	03	64
1302	00	03	44
1672	00	00	20
1673	00	00	86
1674	00	00	20
1675	00	03	64
1295	00	01	89
1296	00	00	92
1294	00	05	33
1293	00	00	59
1286	00	05	85
1285	00	04	50
1289	00	00	20
1284	00	01	37
1287	00	00	37
1288	00	00	63

1281	00	15	09
1182	00	04	51
1135	00	05	37
994	00	03	43
993	00	03	75
992	00	03	80
996	00	02	79
995	00	00	49
997	00	02	90
996	00	01	93
1008	00	00	42
1007	00	00	20
999	00	02	59
1006	00	04	87
1005	00	05	65
1003	00	01	41
1004	00	07	05
1013	00	01	05
2186/818 रास्ता	00	00	97
437	00	01	81
436	00	01	73
435	00	02	53
434	00	02	30
433	00	01	61
452	00	03	15
463	00	03	13
465	00	03	03
466	00	02	32
467	00	01	100

470	00	02	30
396	00	00	10
395	00	00	66
394	00	00	47
391	00	00	20
392	00	00	92
393	00	01	13
477	00	00	20
379	00	00	20
378	00	01	15
478	00	01	12
377	00	01	66
372	00	00	43
495	00	00	20
370	00	03	19
371	00	01	33
369	00	01	79
356	00	00	20
367	00	01	16
368	00	00	20
366	00	00	20
360	00	00	20
365	00	02	67
364	00	00	90
273	00	02	74
272	00	04	34
271	00	02	93
269	00	01	67
270	00	01	24

258	00	02	71
256	00	05	16
257	00	01	43
509	00	01	06
510	00	00	54
240	00	00	29
239	00	01	38
515	00	03	82
238	00	00	20
516	00	05	98
519	00	00	29
518	00	02	24
523	00	02	83
528	00	00	88
522	00	00	20
532	00	06	17
123	00	06	21
122	00	04	89
533	00	01	23
535	00	01	04
534	00	14	26
537	00	03	40
570	00	02	25
569	00	02	55
568	00	05	12
567	00	03	74
538	00	00	45
566	00	00	33
565	00	00	79

16	उना	पेखुबेला	549	00	00	95
			564	00	00	86
			555	00	12	06
			556	00	02	18
			557	00	05	78
			558	00	00	73
			553	00	08	49
			1008	00	10	47
			1016	00	09	29
			1011	00	01	53
			1015	00	02	16
			1014	00	21	34
			1013	00	03	31

[फा. सं. आर-25011/20/2017-ओआर-I]

पवन कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 22nd June, 2017

S.O. 1582.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Petroleum Products from Village : Jhungian, District : Shahid Bhagat Singh Nagar of Punjab State to Village: Pekhubela, District : Una of Himachal Pradesh, PAJPL - Una Branch Pipeline should be laid by the Indian Oil Corporation Limited.

And whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the Right of User in the land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed to this notification.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the petroleum and Mineral Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

Any person interested in the land described in the said schedule may within 21 days from the date on which the copies of this notification issued under sub-section (1) of the section 3 of said Act, as published in the Gazette of India are made available to the general public, object in writing to the acquisition of the right of user therein of laying of the pipeline under the land to Shri. Devraj Sharma, Competent Authority, Indian Oil Corporation Ltd, PAJPL-Una Branch Pipeline Project, 346, Kamla Kunj, D.C. Colony, Una (Himachal Pradesh) -174303.

SCHEDULE

District : Una					State : Himachal Pradesh		
Sr. No.	Name of Tehsil	Name of Village	Hadbast No.	Murabba//Killa OR Khasara No.	Area		
					Hectare	Are	Sq. mtr.
1	2	3	4	5	6	7	8
1	Haroli	Bathari	476	1306 Rasta	00	00	32
				997 Rasta	00	00	50
				1300	00	08	33
				1301	00	00	20
				998	00	14	58
				1279	00	12	67
				1280	00	02	93
				1037	00	18	76
				1036	00	00	58
				1038	00	06	35
				1039	00	03	70
				1040	00	01	25
				1043	00	11	60
				1061	00	10	68
				1073	00	01	91
				1071	00	05	30
				1072	00	04	31
				1070	00	00	20
				1069	00	00	72
				1068	00	00	20
				1076	00	09	13
				1077	00	01	03
				1135	00	00	55
				1133	00	06	35
				1134	00	07	26

1125	00	06	72
1124	00	00	54
1121	00	04	10
1120	00	09	99
1117	00	04	22
1116	00	07	95
930 Rasta	00	00	79
929	00	05	36
928	00	02	51
927	00	01	52
60	00	00	18
61	00	00	42
62	00	04	00
79	00	00	24
80	00	02	67
81	00	02	23
82	00	10	25
104	00	02	62
103	00	03	24
102	00	00	77
101	00	07	15
100	00	00	93
116	00	10	23
122	00	05	12
136	00	00	16
125	00	04	81
124	00	00	20
127	00	02	90
133	00	00	96

			134	00	01	74
			132	00	11	71
			148	00	00	20
			301 Rasta	00	00	57
			25	00	00	17
			302	00	57	56
2	Haroli	Keluwa	3132	00	03	98
			3130	00	01	94
			3128	00	05	58
			3127	00	04	66
			3039	00	01	81
			3043	00	09	50
			3041	00	00	97
			3042	00	07	49
			3060	00	01	59
			3055	00	02	40
			3059	00	06	73
			3097	00	04	40
			3092	00	04	02
			3091	00	01	66
			3093	00	02	81
			3090	00	01	54
			3088	00	06	12
			3089	00	00	20
			3085	00	03	95
			3084	00	04	82
			3083	00	14	46
			3302	00	10	86
			2920	00	01	34

				2919	00	03	68
				2931	00	02	95
				2933	00	01	58
				2934	00	02	54
				2917	00	01	30
				2935	00	01	09
				2916	00	02	40
				2936	00	01	30
				2940	00	01	39
				2947	00	00	83
				2946	00	00	26
				2948	00	12	55
				2950	00	00	94
				2952	00	05	93
				2953	00	04	61
				2954	00	03	08
				2643	00	00	20
				2645	00	01	69
				2646	00	12	28
				2651	00	03	03
3	Haroli	Bathu	475	1892	00	00	20
				1895	00	00	57
				1895/1	00	01	66
				1894	00	00	20
				1897	00	11	50
				1898	00	00	28
				1901	00	06	11
				1901/1	00	00	20
				1911	00	03	53

1910	00	03	79
1909	00	00	77
1912	00	06	28
1908	00	03	51
1860	00	01	28
1861	00	01	73
1867	00	04	43
1865	00	02	78
1862	00	00	20
1864	00	01	82
1854	00	04	14
1855	00	07	37
1824	00	05	52
1990	00	00	25
1822	00	02	37
1823	00	02	03
1819	00	01	73
1821	00	06	02
1817 Rasta	00	00	73
1801 Rasta	00	00	38
1810	00	00	96
1809	00	01	93
1808	00	04	36
1807	00	04	36
1560	00	04	13
1559	00	03	15
1553	00	01	03
1563	00	03	03
1562	00	02	63

				1564	00	00	37
				1566	00	08	54
				1567	00	06	22
				1590	00	00	51
				1586	00	05	69
				1581	00	10	89
				1582	00	02	13
				1579	00	04	11
				1502	00	19	59
				1499	00	11	43
				1497	00	03	96
				1498	00	04	93
				1493	00	07	35
				1666	00	02	27
				1667	00	02	38
				1668	00	03	25
				1669	00	01	43
				1485	00	00	31
				1670	00	03	18
				1671	00	03	82
				1672	00	01	62
				1673	00	00	20
				1676	00	01	41
				1677	00	00	87
				1679	00	00	28
				1680	00	00	58
				1681	00	06	23
				1684/1	00	03	16
4	Haroli	Bat Khurd	474	1376	00	00	82

1377	00	02	78
1384	00	04	01
1385	00	00	20
1396	00	09	88
1395	00	00	20
1397	00	01	53
1442	00	00	52
1404	00	02	91
1405	00	01	96
1406	00	02	05
1403	00	00	20
1407	00	00	20
1408	00	00	20
1409	00	02	15
1412	00	00	67
1411	00	01	01
1410	00	00	66
1441	00	02	41
1440	00	03	20
1439	00	02	66
1438	00	00	20
1437	00	00	20
1456	00	00	20
1457	00	05	05
1454	00	02	92
1468	00	01	03
1467	00	00	61
1466	00	00	89
1469	00	03	24

1465	00	00	70
1470	00	02	19
1471	00	00	20
1482	00	01	82
1481	00	02	47
1486	00	01	97
1503	00	06	56
1490	00	00	20
1504	00	00	77
1510	00	01	59
1509	00	00	92
1508	00	01	46
1505	00	00	34
1507	00	02	51
1313	00	02	96
1314	00	02	48
1318	00	01	68
1317	00	01	47
1320	00	01	27
1321	00	01	40
1323	00	03	71
1324	00	00	20
1288	00	01	29
1293	00	01	27
1290	00	00	56
1289	00	01	48
1286	00	00	20
1287	00	00	29
1291 Rasta	00	00	44

1292 Rasta	00	00	20
1262	00	02	01
1261	00	00	39
1250	00	00	20
1249	00	02	59
1246	00	03	39
1243	00	00	20
1242/1	00	00	75
1242	00	01	04
1241	00	00	80
1239	00	02	100
1236	00	00	82
1238	00	01	02
1237	00	00	83
1232	00	02	16
1231	00	01	25
1230	00	01	11
2174/1688	00	00	61
2173/1688	00	00	37
2172/1688	00	00	99
1682	00	00	98
1690	00	04	47
1691	00	03	39
1692	00	01	51
1696	00	01	85
1718	00	02	42
1719	00	00	28
1697	00	00	20
1710	00	04	08

				1717	00	00	20
				1707	00	00	20
				1708	00	01	30
				1709	00	01	95
				1711	00	01	18
5	Haroli	Bat Kalan	473	678 // 21/3	00	05	61
				678 // 21/4	00	02	81
				678 // 20/2	00	06	02
				678 // 20/1	00	03	25
				678 // 11/2	00	07	76
				678 // 11/1	00	02	65
				678 // 10/1	00	01	35
				682 Rasta	00	00	60
				678 // 10/2/2	00	02	10
				678 // 10/2/1	00	03	21
				678 // 1/2	00	00	56
				679 // 6/4/1	00	00	65
				679 // 6/3	00	01	88
				679 // 6/1	00	00	50
				679 // 5/3	00	03	08
				679 // 5/2	00	05	84
				679 // 5/1	00	00	20
				669 // 25/3	00	01	50
				669 // 25/2	00	07	85
				669 // 25/1	00	00	45
				669 // 16/1	00	09	67
				669 // 15/2	00	01	39
				669 // 17/1	00	00	72
6	Haroli	Tahliwal Nichala	472	154	00	00	98

168	00	00	90
169	00	13	73
171	00	12	46
175	00	00	20
185	00	00	57
189	00	18	76
201 Nala	00	01	13
223	00	03	91
222	00	01	44
221	00	00	84
224	00	00	20
226	00	03	70
226/1	00	05	01
227	00	14	93
388	00	00	27
228 Rasta	00	00	74
369	00	00	20
253	00	03	65
312 Rasta	00	01	92
363	00	01	57
254	00	00	69
255	00	00	20
362	00	11	74
360	00	20	17
317	00	20	09
318	00	13	14
316	00	02	05
315	00	03	15

				314/2	00	03	33
				319	00	00	33
				314/1	00	03	14
				313	00	00	50
7	Haroli	Tehliwal Upparla	472	479	00	01	45
				478	00	01	88
				477 Rasta	00	01	08
				470	00	10	22
				475	00	01	42
				476	00	06	94
				414	00	03	86
				413	00	03	02
				414/1	00	02	69
				515	00	00	20
				411 Rasta	00	00	39
				409	00	00	23
				407	00	09	99
				386	00	00	20
				389	00	02	83
				390	00	07	60
				390/1	00	03	39
				391	00	07	22
				377	00	00	89
				376	00	05	57
				375	00	03	50
				371	00	00	70
				368	00	00	20
				367	00	10	08

				366	00	00	20
				359	00	01	68
				358	00	00	30
				360	00	03	89
				361	00	04	14
				353 Rasta	00	00	58
				339	00	08	42
				307	00	10	56
				338	00	03	47
				309	00	04	02
				310	00	03	93
				298	00	06	86
8	Haroli	Manuwal	471	2552	00	01	07
				2562	00	04	28
				2551	00	04	02
				2548	00	01	25
				2549	00	00	38
				2550	00	00	22
				2564	00	03	100
				2567	00	02	11
				2568	00	00	50
				2570	00	03	61
				2571 Rasta	00	00	77
				2572	00	01	76
				2982	00	01	30
				2983	00	00	20
				2981	00	00	20
				2574	00	00	29
				2577	00	01	94

2980	00	06	41
2578	00	00	46
2580	00	00	53
2582	00	00	64
2583	00	00	54
2581	00	00	55
2600	00	01	76
2601	00	01	13
2605	00	00	20
2604	00	00	34
2602	00	00	34
2603	00	00	20
2629	00	03	68
2626	00	02	22
2628	00	00	45
2627	00	00	20
2651	00	01	71
2650	00	02	34
2653	00	00	20
2652	00	00	20
2655	00	03	17
2656	00	00	20
2659	00	01	81
2660	00	01	23
2654	00	00	20
2662	00	00	20
2661	00	00	31
2663	00	00	72
2675	00	00	37

				2674	00	01	02
				2664	00	00	20
				2671	00	00	20
				2672	00	01	40
				2673	00	00	91
				2677	00	02	32
				2701	00	00	84
				2700	00	00	67
				2699	00	00	33
				2698	00	00	63
				2697	00	00	27
				2696	00	02	02
				2693	00	03	23
				2707	00	00	20
				2708	00	00	73
				2709	00	04	12
				2721	00	05	47
				3492/2727	00	00	81
				3499/2730	00	00	96
				2728	00	05	93
				3495/2729	00	00	50
				3496/2729	00	00	25
				2688 Rasta	00	01	09
9	Haroli	Theh	471	2481 Rasta	00	00	71
				2126	00	01	18
				2127	00	00	21
				2128	00	01	57
				2129	00	01	25
				2136	00	08	22

2135	00	02	01
2138	00	00	34
2150	00	00	20
2139	00	00	24
2140	00	03	45
2149	00	00	20
2141	00	00	68
2142	00	06	23
2143	00	00	71
2144	00	00	37
2145	00	01	52
2445	00	09	30
2442	00	00	23
2443	00	00	29
2444	00	00	67
2440 Rasta	00	00	66
2260	00	01	09
2358	00	03	12
2262	00	01	33
2357	00	00	91
2356	00	06	89
2355	00	00	88
2354	00	02	47
2292	00	00	75
2291	00	00	20
2290	00	00	20
2293	00	02	82
2294	00	00	20
2296	00	00	20

				2295	00	00	56
				2286	00	05	29
				2298	00	00	44
				2299	00	00	20
				2302	00	00	72
				2303	00	00	38
				2304	00	00	86
				2305	00	01	64
				2306	00	02	66
				2307	00	00	25
				2308	00	00	22
				2324	00	05	75
				2318	00	03	96
				2317	00	05	20
				2316	00	01	42
				2401	00	02	83
				2402	00	01	36
10	Haroli	Nangal Khurd	471	2781	00	09	98
				2783	00	04	92
				2785	00	02	20
				2784	00	02	27
				2787	00	07	79
				2789	00	00	20
				2788	00	05	86
				2833	00	00	20
				2823	00	03	35
				2824	00	05	05
				2832	00	02	32
				2822	00	00	20

				2825	00	05	02
				2828	00	02	01
				2827	00	03	71
				2826	00	02	06
				2841	00	14	06
				2943 Rasta	00	00	81
				2942	00	12	64
				2940	00	03	67
				2939	00	00	81
				2913	00	20	07
				2937	00	02	02
				2935	00	06	82
				2934	00	05	28
				2933	00	00	80
				2932	00	06	24
				2926	00	12	20
				2924	00	00	20
				2925	00	00	82
				2923	00	20	73
				2920	00	20	39
11	Una	Laladi	470	6440	00	01	59
				6464	00	00	20
				6439	00	01	35
				6445	00	00	20
				6441	00	04	39
				6442	00	04	33
				6444	00	00	20
				6443	00	03	82
				6459	00	09	19

				6458	00	01	13
				6460	00	00	92
				6457	00	17	17
12	Una	Udaypur	224	1204	00	34	52
				1203	00	03	23
				1202	00	24	60
				1199	00	13	96
				1198	00	23	62
				1197	00	27	37
				1137	00	00	20
				1138	00	01	54
				1140	00	32	47
				1141	00	09	61
				1245/1155	00	00	55
				1244/1155	00	00	20
				1156	00	01	74
				1160	00	00	22
				1158	00	03	80
				1159	00	15	15
				1173	00	22	79
				953	00	09	68
				1176	00	18	24
				1175	00	00	96
13	Una	Fatehpur	223	1881 Rasta	00	00	64
				1880	00	07	55
				1879	00	11	05
				1902	00	00	20
				1903	00	04	94
				1904	00	02	49

1905	00	02	86
1908	00	00	20
1907	00	00	20
1910	00	02	55
1909	00	01	25
1919	00	04	86
1918	00	01	47
1915	00	05	49
1926	00	00	61
1914	00	00	30
1927	00	00	30
1929	00	00	20
1925	00	01	52
1928	00	01	60
1923	00	00	20
1949	00	07	08
1952	00	01	09
1950	00	00	69
1951	00	00	29
1967	00	08	24
1972	00	01	58
1966	00	01	31
1965	00	01	09
1985	00	00	22
1973	00	00	20
1984	00	00	49
1986	00	00	39
1988	00	11	79
1638	00	07	01

				1631	00	00	20
				1630 Rasta	00	00	23
				1632	00	00	48
				1633	00	00	20
				1629	00	02	01
				1634 Rasta	00	00	20
				1635	00	00	20
				1626 Rasta	00	00	50
				1627	00	02	33
				1603	00	01	95
				1605	00	00	37
				1608	00	02	88
				1609	00	02	38
				1607	00	00	20
				1610	00	02	57
				1611	00	02	75
				1612	00	01	53
				1493	00	02	39
				1492	00	00	90
14	Una	Nangran Upparla	222	2463	00	00	21
				2464	00	14	20
				2466 Rasta	00	02	50
15	Una	Nangran Jhikla	222	2169	00	00	25
				2159	00	03	95
				2156	00	02	23
				2155	00	02	64
				2154	00	01	42
				2153	00	01	42

2112	00	00	58
1889	00	01	83
1888	00	00	33
1887	00	02	68
1877	00	02	77
1878	00	00	15
1879	00	00	20
1874	00	02	01
1873	00	01	96
1872	00	00	46
1869	00	01	47
1868	00	00	20
1867	00	01	86
1866	00	00	20
1862	00	01	89
1863	00	00	36
1864	00	00	20
1858	00	00	20
1857	00	01	96
1856	00	01	66
1850	00	03	87
1851	00	00	20
1846 Rasta	00	00	64
1828	00	02	00
1829	00	18	29
1830	00	04	33
1832	00	00	20
1831	00	00	79
1821	00	02	44

1820	00	02	37
1813	00	00	70
1812	00	01	44
1811	00	02	25
1656	00	00	20
1655	00	01	16
1657	00	03	29
1658	00	03	21
1659	00	02	78
1660	00	01	86
1384	00	01	38
1383	00	00	60
1662	00	01	11
1382	00	01	54
1377 Rasta	00	00	63
1663	00	00	78
1359	00	02	73
1358	00	01	20
1338	00	01	51
1336	00	02	50
1337	00	00	20
1335	00	00	62
1330	00	00	20
1667	00	00	69
1329	00	00	66
1323	00	01	16
1324	00	01	00
1325	00	02	77
1303	00	03	64

1302	00	03	44
1672	00	00	20
1673	00	00	86
1674	00	00	20
1675	00	03	64
1295	00	01	89
1296	00	00	92
1294	00	05	33
1293	00	00	59
1286	00	05	85
1285	00	04	50
1289	00	00	20
1284	00	01	37
1287	00	00	37
1288	00	00	63
1281	00	15	09
1182	00	04	51
1135	00	05	37
994	00	03	43
993	00	03	75
992	00	03	80
996	00	02	79
995	00	00	49
997	00	02	90
996	00	01	93
1008	00	00	42
1007	00	00	20
999	00	02	59
1006	00	04	87

1005	00	05	65
1003	00	01	41
1004	00	07	05
1013	00	01	05
2186/818 Rasta	00	00	97
437	00	01	81
436	00	01	73
435	00	02	53
434	00	02	30
433	00	01	61
452	00	03	15
463	00	03	13
465	00	03	03
466	00	02	32
467	00	01	100
470	00	02	30
396	00	00	10
395	00	00	66
394	00	00	47
391	00	00	20
392	00	00	92
393	00	01	13
477	00	00	20
379	00	00	20
378	00	01	15
478	00	01	12
377	00	01	66
372	00	00	43
495	00	00	20

370	00	03	19
371	00	01	33
369	00	01	79
356	00	00	20
367	00	01	16
368	00	00	20
366	00	00	20
360	00	00	20
365	00	02	67
364	00	00	90
273	00	02	74
272	00	04	34
271	00	02	93
269	00	01	67
270	00	01	24
258	00	02	71
256	00	05	16
257	00	01	43
509	00	01	06
510	00	00	54
240	00	00	29
239	00	01	38
515	00	03	82
238	00	00	20
516	00	05	98
519	00	00	29
518	00	02	24
523	00	02	83
528	00	00	88

			522	00	00	20
			532	00	06	17
			123	00	06	21
			122	00	04	89
			533	00	01	23
			535	00	01	04
			534	00	14	26
			537	00	03	40
			570	00	02	25
			569	00	02	55
			568	00	05	12
			567	00	03	74
			538	00	00	45
			566	00	00	33
			565	00	00	79
			549	00	00	95
			564	00	00	86
			555	00	12	06
			556	00	02	18
			557	00	05	78
			558	00	00	73
			553	00	08	49
16	Una	Pekhubela	1008	00	10	47
			1016	00	09	29
			1011	00	01	53
			1015	00	02	16
			1014	00	21	34
			1013	00	03	31

[F. No. R-25011/20/2017-OR-I]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 29 जून, 2017

का.आ. 1583.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि तमिलनाडू राज्य के सेलम को केरल राज्य में भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड की कोच्चि रिफाइनरी से तरलीकृत पेट्रोलियम गैस के परिवहन के लिए, एक पाइपलाईन कोच्चि सेलम पाइपलाईन प्राइवेट लिमिटेड द्वारा बिछाई जानी चाहिए;

और केन्द्रीय सरकार को ऐसी पाइपलाईन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि में, जो इससे उपाबद्ध अनुसूची में वर्णित है, जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50), की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिये उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री बशीरकुंजू ए, सक्षम प्राधिकारी , कोच्चि सेलम पाइपलाईन प्राइवेट लिमिटेड , करुण एंवलेव, द्वितीय तल, डोर न. बी- 2, एस एन जंक्शन, रिफाइनरी रोड, यूनिन बैंक ऑफ इंडिया के सामने, त्रिपुनिथुरा, जिला ऐरनाकुलम, केरल – 682309 को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

राज्य: केरल	जिला: ऐरनाकुलम	तालुक: कुन्नाथुनाडू		
नाम ग्राम	सर्वे नम्बर	क्षेत्रफल		
		हेक्टेयर	एरिया	प्रति वर्गमीटर
(1)	(2)	(3)	(4)	(5)
पुथैनकुरिस्सू (खण्ड सं. 37)	92 / 13	0	00	45
	92 / 8	0	04	12
	93 / 12	0	00	31
	93 / 13	0	00	20
	93 / 7	0	00	20
	94 / 1	0	00	74
	94 / 10	0	04	68
	94 / 11	0	04	53
	94 / 14	0	02	72
	94 / 15	0	02	47
	94 / 16	0	04	89
	94 / 17	0	01	31
	94 / 18	0	00	87
	94 / 19	0	00	96
	94 / 2	0	01	53
	94 / 20	0	00	96
	94 / 21	0	02	00
	94 / 22	0	01	68
	94 / 3	0	01	91
	94 / 4	0	00	20
	94 / 7	0	00	59
	94 / 8	0	01	29
	94 / 9	0	02	61
	95	0	01	73
	100 / 38	0	00	20
	100 / 10	0	00	30
	100 / 11	0	00	91
	100 / 12	0	02	42
	100 / 13	0	01	34

पुथैनकुरिस्सू (खण्ड सं. 37)	100 / 14	0	00	91
	100 / 15	0	00	20
	100 / 16	0	04	25
	100 / 17	0	15	75
	100 / 33	0	00	86
	141 / 10	0	02	00
	141 / 12	0	04	86
	141 / 13	0	03	35
	141 / 2	0	00	49
	141 / 3	0	02	20
	141 / 4	0	01	82
	141 / 6	0	01	18
	142 / 10	0	00	90
	142 / 11	0	03	95
	142 / 12	0	06	85
	142 / 14	0	00	58
	142 / 15	0	00	20
	142 / 16	0	02	80
	142 / 17	0	00	31
	142 / 18	0	00	41
	142 / 19	0	00	23
	142 / 20	0	10	64
	142 / 21	0	01	47
	142 / 7	0	00	55
	142 / 9	0	00	75
	145 / 2	0	05	42
	145 / 3	0	04	24
	145 / 4	0	01	38
	145 / 5	0	01	50
	146 / 1	0	02	71
	146 / 16	0	01	75
	146 / 12	0	02	39
	146 / 13	0	00	69
	146 / 14	0	03	05
	146 / 15	0	00	20
	146 / 18	0	00	20
	146 / 19	0	01	18
	146 / 2	0	00	20
	146 / 20	0	00	74
	146 / 21	0	01	12
	146 / 22	0	00	36
	146 / 23	0	04	56
	146 / 24	0	02	33
	146 / 25	0	01	62
	146 / 3	0	00	74
	146 / 4	0	05	47
	146 / 5	0	00	57
	146 / 7	0	00	97
	146 / 8	0	02	38
	146 / 9	0	01	47
	150 / 1	0	03	87
	150 / 10	0	00	20
	150 / 12	0	01	78

पुथैनकुरिस्सू (खण्ड सं. 37)	150 / 14	0	01	53
	150 / 16	0	00	20
	150 / 17	0	00	64
	150 / 19	0	00	48
	150 / 21	0	00	59
	150 / 7	0	05	38
	150 / 8	0	00	63
	150 / 9	0	00	44
कुन्नाथुनाडू (खण्ड सं. 36)	300 / 10	0	00	20
	301 / 10	0	02	30
	301 / 11	0	01	17
	301 / 14	0	02	13
	301 / 15	0	01	14
	301 / 16	0	01	17
	301 / 17	0	00	95
	301 / 18	0	02	20
	301 / 19	0	08	00
	301 / 4	0	02	94
	301 / 5	0	03	61
	301 / 6	0	00	84
	301 / 7	0	05	18
	301 / 8	0	02	41
	301 / 9	0	01	03
	305 / 1	0	09	72
	305 / 12	0	03	08
	305 / 13	0	03	80
	305 / 6	0	08	78
	305 / 7	0	03	53
	306 / 2	0	04	09
	306 / 3	0	06	93
	323 / 3	0	05	01
	324 / 1	0	16	25
	325 / 1	0	06	00
	325 / 2	0	15	33
	325 / 3	0	03	65
	325 / 4	0	01	33
	326 / 3	0	06	79
	326 / 4	0	10	33
	326 / 5	0	02	14
	326 / 7	0	01	99
	327 / 11	0	01	25
	327 / 9	0	15	06
	330 / 6	0	09	83
	330 / 7	0	06	84
	336 / 1	0	05	38
	336 / 2	0	06	98
	336 / 3	0	06	65
	336 / 4	0	05	19
	336 / 6	0	05	51
	336 / 8	0	03	12
	336 / 9	0	04	40
	339 / 2	0	12	87

कुन्नाथुनाडू (खण्ड सं. 36)	339 / 3	0	15	86
	350 / 1	0	03	70
	350 / 2	0	05	78
	350 / 3	0	06	56
	350 / 4	0	07	60
	350 / 5	0	03	91
	350 / 6	0	03	40
	350 / 7	0	08	06
	354 / 1	0	08	02
	354 / 2	0	02	48
	354 / 3	0	06	27
	354 / 5	0	11	45
	357 / 1	0	01	30
	357 / 2	0	52	64
	358 / 2	0	00	39
	360 / 1	0	10	64
	360 / 2	0	03	53
	360 / 3	0	02	86
	360 / 4	0	06	90
	378 / 10	0	02	81
	383 / 5	0	00	48
	384 / 10	0	00	20
	384 / 11	0	00	20
	385 / 1	0	03	85
	385 / 2	0	05	49
	385 / 3	0	10	34
	385 / 4	0	00	43
	385 / 5	0	11	42
	385 / 6	0	01	15
	385 / 7	0	06	90
	385 / 8	0	10	44
मारमपिल्लि (खण्ड सं. 23)	1 / 8	0	10	35
	1 / 11	0	00	70
	1 / 12	0	02	20
	1 / 13	0	03	60
	3 / 9	0	06	60
	3 / 11	0	02	41

राज्य : केरल

जिला : ऐरनाकुलम

तालुक: कणयन्नूर

नाम ग्राम	सर्वे नम्बर	क्षेत्रफल		
		हेक्टेयर	एरिया	प्रति वर्गमीटर
तिरुवानकुलम (खंड सं. 10)	567 / 3	0	01	20

राज्य: केरल

जिला: ऐरनाकुलम

तालुक: आलवा

नाम ग्राम	सर्वे नम्बर	क्षेत्रफल		
		हेक्टेयर	एरिया	प्रति वर्गमीटर
पारक्कडवु (खण्ड सं. 4)	120 / 1	0	01	13
	120 / 09	0	01	11

पारक्कडु (खण्ड सं. 4)	120 / 10	0	02	86
	120 / 11	0	00	33
	120 / 5	0	00	20
	120 / 6	0	01	27
	120 / 7	0	00	68
	120 / 8	0	01	43
	121 / 1	0	06	18
	121 / 2	0	09	24
	121 / 3	0	07	24
	122 / 1	0	00	82
	122 / 8	0	02	29
	122 / 13	0	03	08
	122 / 16	0	01	27
	122 / 19	0	01	28
	124 / 2	0	01	08

राज्य: केरल

जिला: त्रिशुर

तालुक: चालक्कुडी

नाम ग्राम	सर्वे नम्बर	क्षेत्रफल		
		हेक्टेयर	एरिया	प्रति वर्गमीटर
किषक्कमुरी (खण्ड सं. 49)	535 / 1	0	05	41
	535 / 2	0	13	28
	535 / 4	0	20	13
	872 / 1	0	06	80
	872 / 2	0	00	20
	874 / 1	0	00	20
	874 / 2	0	00	30
	875 / 1	0	05	40
	875 / 2	0	00	38
	875 / 4	0	06	63
	878 / 5	0	01	11
	879	0	01	83
	880 / 3	0	02	52

राज्य: केरल

जिला: ऐरनाकुलम

तालुक: आलुवा

नाम ग्राम	सर्वे नम्बर	क्षेत्रफल		
		हेक्टेयर	एरिया	प्रति वर्गमीटर
मटूर (खण्ड सं. 27)	1 / 11	0	01	52
	1 / 12	0	01	54

मटूर (खण्ड सं. 27)	1 / 13	0	00	20
	3 / 1	0	04	07
	3 / 2	0	08	91
	3 / 25	0	00	91
	3 / 5	0	06	98
	3 / 6	0	03	27
	4 / 1	0	05	42
	4 / 2	0	09	31
	6	0	01	92
	8	0	12	60
	7 / 1	0	10	61
	7 / 10	0	01	32
	7 / 11	0	00	46
	7 / 2	0	04	64
	7 / 3	0	00	20
	7 / 7	0	05	20
	7 / 8	0	04	99
	7 / 9	0	05	00
	9 / 1	0	04	98
	9 / 2	0	01	91
	9 / 22	0	02	47
	9 / 6	0	00	57
	264 / 8	0	09	26
	264 / 7	0	02	19
	265 / 10	0	04	52
	265 / 2	0	13	82
	265 / 5	0	04	14
	265 / 6	0	02	00
	265 / 7	0	02	43
	265 / 8	0	02	89
	265 / 9	0	02	69
	266	0	00	22
	324 / 9	0	00	13
	333 / 13	0	03	67
अंगमाली (खण्ड सं. 12)	88 / 2	0	02	46
	88 / 3	0	06	92
	88 / 4	0	11	36
	88 / 6	0	00	58
	89 / 6	0	00	40
	89 / 7	0	15	83
	89 / 8	0	01	49
	90 / 1	0	03	26
	90 / 2	0	04	00
	90 / 3	0	04	89
	90 / 4	0	07	53
	110 / 11	0	04	01
	110 / 2	0	00	23
	110 / 3	0	10	90
	110 / 4	0	01	45
	110 / 5	0	06	48
	110 / 7	0	01	17
	110 / 8	0	00	97
	110 / 9	0	00	20
	113 / 1	0	04	40

अंगमाली (खण्ड सं. 12)	204	0	00	20
	116 / 1	0	13	35
	116 / 2	0	09	44
	116 / 3	0	05	26
	117 / 1	0	00	80
	117 / 2	0	00	80
	117 / 3	0	01	50
	117 / 4	0	04	00
	118 / 1	0	03	50
	118 / 2	0	06	49
	118 / 5	0	03	04
	118 / 6	0	03	25
	207 / 1	0	02	19
	207 / 15	0	04	84
	207 / 6	0	00	28
	207 / 7	0	07	46
	207 / 8	0	00	35
	208 / 3	0	10	15
	209 / 1	0	03	75
	209 / 16	0	02	46
	209 / 2	0	08	24
	209 / 3	0	04	93
	209 / 4	0	02	00
	209 / 5	0	01	34
	215 / 1	0	09	37
	215 / 10	0	06	95
	215 / 12	0	02	66
	215 / 8	0	00	20
	215 / 9	0	09	37
	216 / 1	0	06	84
	216 / 10	0	06	60
	216 / 12	0	03	17
	216 / 13	0	01	00
	216 / 14	0	03	75
	216 / 2	0	05	91
	216 / 3	0	11	40
	216 / 4	0	00	20
	216 / 8	0	02	96
अंगमाली (खण्ड सं. 11)	589	0	01	96
	590	0	01	08
	637	0	20	92
	642	0	34	40
तुरवूर (खण्ड सं. 13)	91	0	03	44
	92 / 1	0	05	67
	92 / 5	0	03	33
	92 / 6	0	03	77
	92 / 7	0	03	29
	92 / 8	0	04	70
	92 / 9	0	00	23
	93 / 10	0	17	86
	93 / 2	0	11	82
	93 / 3	0	00	95

तुरवूर (खण्ड सं. 13)	93 / 9	0	16	33
	100 / 1	0	04	36
	100 / 3	0	02	61
	100 / 4	0	01	64
	100 / 5	0	03	34
	101 / 1	0	04	39
	101 / 10	0	04	19
	101 / 11	0	02	98
	101 / 15	0	04	22
	101 / 2	0	04	78
	101 / 3	0	00	83
	101 / 4	0	15	32
	101 / 5	0	03	59
	101 / 6	0	10	63
	101 / 9	0	00	20
	102 / 10	0	02	09
	102 / 11	0	02	48
	102 / 12	0	05	57
	102 / 13	0	03	62
	102 / 14	0	00	30
	102 / 15	0	02	75
	102 / 7	0	02	91
	102 / 8	0	00	20
	102 / 9	0	00	74
	104 / 2	0	03	74
	104 / 6	0	03	69
	104 / 7	0	01	58
	104 / 8	0	00	67
	104 / 9	0	00	20
	109	0	21	02
वडक्कुम्बागम (खण्ड सं. 28)	158 / 11	0	00	17
	206 / 6	0	02	02
	210 / 3	0	00	07
	263 / 2	0	01	27
	268 / 11	0	00	48

[फा. सं. आर-31015/4/2015/37111-ओआर-II]

पवन कुमार, अवर सचिव

New Delhi, the 29th June, 2017

S.O. 1583.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Liquefied Petroleum Gas from Kochi Refinery of Bharat Petroleum Corporation Limited in the State of Kerala to Salem in the State of Tamil Nadu and that the a pipeline should be laid by M/S Kochi – Salem pipeline Private Ltd;

And whereas , it appears to the Central Government that for the purpose of laying such pipelines, it is necessary to acquire the right of user in the lands under which such pipelines are proposed to be laid described in the schedule annexed to this notification;

Now therefore in the exercise of powers conferred by sub section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (Central Act 50 of 1962) the Central Government hereby declares its intention to acquire the right of user therein.

Any person, interested in land described in the said schedule may, within 21 days from the date on which the copies of this notification, as published in the Gazette of India are made available to the general public, object in writing to the acquisition of the right of user therein or laying or the pipeline under the land to Sri. Basheerkunju. A, Competent Authority, Kochi-Salem Pipeline Private Ltd, Karun Enclave 2nd floor, Door No. B2, S. N. Junction, Refinery Road, Opp: Union Bank of India, Tripunithura, Pin – 682 301.

SCHEDULE**STATE : KERALA****DISTRICT : ERNAKULAM****TALUK : KUNNATHUNADU**

VILLAGE	SURVEY NUMBERS	AREA		
		HECTARES	ARES	SQ: METERS
PUTHENKURISSU BLOCK. No. 37	92/13	0	00	45
	92/8	0	04	12
	93/12	0	00	31
	93/13	0	00	20
	93/7	0	00	20
	94/1	0	00	74
	94/10	0	04	68
	94/11	0	04	53
	94/14	0	02	72
	94/15	0	02	47
	94/16	0	04	89
	94/17	0	01	31
	94/18	0	00	87
	94/19	0	00	96
	94/2	0	01	53
	94/20	0	00	96
	94/21	0	02	00
	94/22	0	01	68
	94/3	0	01	91
	94/4	0	00	20
	94/7	0	00	59
	94/8	0	01	29
	94/9	0	02	61
	95	0	01	73
	100/38	0	00	20
	100/10	0	00	30
	100/11	0	00	91
	100/12	0	02	42
	100/13	0	01	34
	100/14	0	00	91
	100/15	0	00	20
	100/16	0	04	25
	100/17	0	15	75
	100/33	0	00	86
	141/10	0	02	00
	141/12	0	04	86
	141/13	0	03	35
	141/2	0	00	49
	141/3	0	02	20
	141/4	0	01	82
	141/6	0	01	18
	142/10	0	00	90
	142/11	0	03	95
	142/12	0	06	85
	142/14	0	00	58
	142/15	0	00	20
	142/16	0	02	80
	142/17	0	00	31
	142/18	0	00	41
	142/19	0	00	23
	142/20	0	10	64
	142/21	0	01	47
	142/7	0	00	55

PUTHENKURISSU BLOCK. No. 37	142/9	0	00	75
	145/2	0	05	42
	145/3	0	04	24
	145/4	0	01	38
	145/5	0	01	50
	146/1	0	02	71
	146/16	0	01	75
	146/12	0	02	39
	146/13	0	00	69
	146/14	0	03	05
	146/15	0	00	20
	146/18	0	00	20
	146/19	0	01	18
	146/2	0	00	20
	146/20	0	00	74
	146/21	0	01	12
	146/22	0	00	36
	146/23	0	04	56
	146/24	0	02	33
	146/25	0	01	62
	146/3	0	00	74
	146/4	0	05	47
	146/5	0	00	57
	146/7	0	00	97
	146/8	0	02	38
	146/9	0	01	47
	150/1	0	03	87
	150/10	0	00	20
	150/12	0	01	78
	150/14	0	01	53
	150/16	0	00	20
	150/17	0	00	64
	150/19	0	00	48
	150/21	0	00	59
	150/7	0	05	38
	150/8	0	00	63
	150/9	0	00	44
KUNNATHUNADU BLOCK. NO. 36	300/10	0	00	20
	301/10	0	02	30
	301/11	0	01	17
	301/14	0	02	13
	301/15	0	01	14
	301/16	0	01	17
	301/17	0	00	95
	301/18	0	02	20
	301/19	0	08	00
	301/4	0	02	94
	301/5	0	03	61
	301/6	0	00	84
	301/7	0	05	18
	301/8	0	02	41
	301/9	0	01	03
	305/1	0	09	72
	305/12	0	03	08
	305/13	0	03	80
	305/6	0	08	78

KUNNATHUNADU BLOCK. No. 36	305/7	0	03	53
	306/2	0	04	09
	306/3	0	06	93
	323/3	0	05	01
	324/1	0	16	25
	325/1	0	06	00
	325/2	0	15	33
	325/3	0	03	65
	325/4	0	01	33
	326/3	0	06	79
	326/4	0	10	33
	326/5	0	02	14
	326/7	0	01	99
	327/11	0	01	25
	327/9	0	15	06
	330/6	0	09	83
	330/7	0	06	84
	336/1	0	05	38
	336/2	0	06	98
	336/3	0	06	65
	336/4	0	05	19
	336/6	0	05	51
	336/8	0	03	12
	336/9	0	04	40
	339/2	0	12	87
	339/3	0	15	86
	350/1	0	03	70
	350/2	0	05	78
	350/3	0	06	56
	350/4	0	07	60
	350/5	0	03	91
	350/6	0	03	40
	350/7	0	08	06
	354/1	0	08	02
	354/2	0	02	48
	354/3	0	06	27
	354/5	0	11	45
	357/1	0	01	30
	357/2	0	52	64
	358/2	0	00	39
	360/1	0	10	64
	360/2	0	03	53
	360/3	0	02	86
	360/4	0	06	90
	378/10	0	02	81
	383/5	0	00	48
	384/10	0	00	20
	384/11	0	00	20
	385/1	0	03	85
	385/2	0	05	49
	385/3	0	10	34
	385/4	0	00	43
	385/5	0	11	42
	385/6	0	01	15
	385/7	0	06	90
	385/8	0	10	44
MARAMPILLY BLOCK. No. 23	1/8	0	10	35

MARAMPILLY BLOCK. No. 23	1/11	0	00	70
	1/12	0	02	20
	1/13	0	03	60
	3/9	0	06	60
	3/11	0	02	41

STATE : KERALA

DISTRICT : ERNAKULAM

TALUK : KANAYANNUR

VILLAGE	SURVEY NUMBERS	AREA(APPROX)		
		HECTARES	ARES	SQ MTRS
THIRUVANKULAM BLOCK. No. 10	567/3	0	01	20

STATE : KERALA

DISTRICT : TRISSUR

TALUK : CHALAKUDI

VILLAGE	SURVEY NUMBERS	AREA		
		HECTARES	ARES	SQ: METERS
KIZHAKKUMURI BLOCK. No. 49	535/1	0	05	41
	535/2	0	13	28
	535/4	0	20	13
	872/1	0	06	80
	872/2	0	00	20
	874/1	0	00	20
	874/2	0	00	30
	875/1	0	05	40
	875/2	0	00	38
	875/4	0	06	63
	878/5	0	01	11
	879	0	01	83
	880/3	0	02	52

STATE : KERALA

DISTRICT : ERNAKULAM

TALUK : ALUVA

VILLAGE	SURVEY NUMBERS	AREA		
		HECTARES	ARES	SQ: METERS
PARAKKADAVU BLOCK. No. 4	120/1	0	01	13
	120/09	0	01	11
	120/10	0	02	86
	120/11	0	00	33
	120/5	0	00	20
	120/6	0	01	27
	120/7	0	00	68
	120/8	0	01	43
	121/1	0	06	18
	121/2	0	09	24
	121/3	0	07	24
	122/1	0	00	82
	122/8	0	02	29
	122/13	0	03	08
	122/16	0	01	27
	122/19	0	01	28
	124/2	0	01	08
MATTOOR BLOCK. No. 27	1/11	0	01	52
	1/12	0	01	54
	1/13	0	00	20
	3/1	0	04	07

MATTOOR BLOCK. No. 27	3/2	0	08	91
	3/25	0	00	91
	3/5	0	06	98
	3/6	0	03	27
	4/1	0	05	42
	4/2	0	09	31
	6	0	01	92
	8	0	12	60
	7/1	0	10	61
	7/10	0	01	32
	7/11	0	00	46
	7/2	0	04	64
	7/3	0	00	20
	7/7	0	05	20
	7/8	0	04	99
	7/9	0	05	00
	9/1	0	04	98
	9/2	0	01	91
	9/22	0	02	47
	9/6	0	00	57
	264/8	0	09	26
	264/7	0	02	19
	265/10	0	04	52
	265/2	0	13	82
	265/5	0	04	14
	265/6	0	02	00
	265/7	0	02	43
	265/8	0	02	89
	265/9	0	02	69
	266	0	00	22
	324/9	0	00	13
	333/13	0	03	67
ANGAMALI BLOCK. No. 12	88/2	0	02	46
	88/3	0	06	92
	88/4	0	11	36
	88/6	0	00	58
	89/6	0	00	40
	89/7	0	15	83
	89/8	0	01	49
	90/1	0	03	26
	90/2	0	04	00
	90/3	0	04	89
	90/4	0	07	53
	110/11	0	04	01
	110/2	0	00	23
	110/3	0	10	90
	110/4	0	01	45
	110/5	0	06	48
	110/7	0	01	17
	110/8	0	00	97
	110/9	0	00	20
	113/1	0	04	40

ANGAMALI BLOCK No.12	204	0	00	20
	116/1	0	13	35
	116/2	0	09	44
	116/3	0	05	26
	117/1	0	00	80
	117/2	0	00	80
	117/3	0	01	50
	117/4	0	04	00
	118/1	0	03	50
	118/2	0	06	49
	118/5	0	03	04
	118/6	0	03	25
	207/1	0	02	19
	207/15	0	04	84
	207/6	0	00	28
	207/7	0	07	46
	207/8	0	00	35
	208/3	0	10	15
	209/1	0	03	75
	209/16	0	02	46
	209/2	0	08	24
	209/3	0	04	93
	209/4	0	02	00
	209/5	0	01	34
	215/1	0	09	37
	215/10	0	06	95
	215/12	0	02	66
	215/8	0	00	20
	215/9	0	09	37
	216/1	0	06	84
	216/10	0	06	60
	216/12	0	03	17
	216/13	0	01	00
	216/14	0	03	75
	216/2	0	05	91
	216/3	0	11	40
	216/4	0	00	20
	216/8	0	02	96
ANGAMALI BLOCK. No. 11	589	0	01	96
	590	0	01	08
	637	0	20	92
	642	0	34	40
THURAVOOR BLOCK No. 13	91	0	03	44
	92/1	0	05	67
	92/5	0	03	33
	92/6	0	03	77
	92/7	0	03	29
	92/8	0	04	70
	92/9	0	00	23
	93/10	0	17	86
	93/2	0	11	82

THURAVOOR BLOCK No. 13	93/3	0	00	95
	93/9	0	16	33
	100/1	0	04	36
	100/3	0	02	61
	100/4	0	01	64
	100/5	0	03	34
	101/1	0	04	39
	101/10	0	04	19
	101/11	0	02	98
	101/15	0	04	22
	101/2	0	04	78
	101/3	0	00	83
	101/4	0	15	32
	101/5	0	03	59
	101/6	0	10	63
	101/9	0	00	20
	102/10	0	02	09
	102/11	0	02	48
	102/12	0	05	57
	102/13	0	03	62
	102/14	0	00	30
	102/15	0	02	75
	102/7	0	02	91
	102/8	0	00	20
	102/9	0	00	74
	104/2	0	03	74
	104/6	0	03	69
	104/7	0	01	58
	104/8	0	00	67
	104/9	0	00	20
	109	0	21	02
VADAKKUMBHAGAM BLOCK No. 28	158/11	0	00	17
	206/6	0	02	02
	210/3	0	00	07
	263/2	0	01	27
	268/11	0	00	48

[F. No. R-31015/4/2015/37111-OR-II]

PAWAN KUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 28 जून, 2017

का.आ. 1584.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, आयुध कारखाना, खमरिया, जबलपुर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर 134/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-14012/30/2001-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 28th June, 2017

S.O. 1584.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R 134/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Ordnance Factory, Khamaria, Jabalpur and their workman, which was received by the Central Government on 08.06.2017.

[No. L-14012/30/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****No. CGIT/LC/R/134/2001**

Shri O.P.Yadav, President,
Ordnance Labour Union.
H.No.61/8, Bhandallia,
Hanumantal, Behind Police Station,
Jabalpur.

... Workman

Versus

General Manager,
Ordnance factory,
Khamaria,
Jabalpur.

... Management

AWARDPassed on this 4th day of May 2017

1. As per letter dated 14-8-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-14012/30/2001-IR(DU). The dispute under reference relates to:
“Whether the action of the management of Ordnance Factory, Khamaria, Jabalpur (MP) in removing the services of Shri Mohan, Labour B.T.No.PESA/76/63729 is justified? If not, to what relief the workman is entitled to?”
2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/5. Case of workman is that he was appointed as labour in establishment of 2nd party, OFK, Jabalpur on 2-1-84. His service record was unblemished. Chargesheet was served on him on complaint. On 8-4-95, he was suspended. Chargesheet under Rule 14 ccs CCA Rules 1965 was served on him on 20-11-96 after inordinate delay of 19 months. Workman further submits that prevelous allegations were made against him in chargesheet of impersonation. He denied charges submitting his reply. That Departmental Enquiry was initiated against him. That the prosecution witnesses did not depose anything against him. On 18-8-98, Enquiry Officer submitted his report holding workman not guilty of charges. Management disagreed with findings of Enquiry Officer and revised findings were recorded. On the basis of revise findings punishment of removal was imposed against him. Appeal by workman was rejected by Appellate Authority.
3. Workman further submits that in order to establish charge of impersonation, it was necessary to examine Raghunath S/o Shiv without examining said person. The charge cannot be proved. That management failed to prove employment card No. 8/13663/67 before Enquiry Officer. In absence of said employment card, charge of fraudulently seeking employment could not be proved. That Disciplinary Authority has no authority to go beyond the record of Enquiry Proceedings as per Rule 15 CCS CCA Rule 1965. That punishment imposed against him is contrary to the principles of natural justice. On such ground, workman prays for his reinstatement with backwages.
4. 2nd party management filed Written Statement at Page 6/1 to 6/2 opposing claim of workman. 2nd party management submits that anonymous complaint was received on 1-6-90 that Mohan S/o Jhaku who employed

in GIF and another person in name of Mohan is employed in OFK . on receipt of said complaint, General Manager, GIF vide letter dated 10-8-90 referred matter to Ordnance Factory Khamaria forwarding details of employees employed in GIF. Management of GIF also written letter 20-7-90 to District Employment Officer, Jabalpur informing that Mohanlal is appointed in GIF on 10-10-79 as Labour Grade B. Management received information that another man having same particulars is working in Ordnance Factory, Jabalpur. The matter was requested to be inquired, details of both persons are given in Para 2 of the Written Statement. Particulars of Mohanlal employed in GIF name of his father is shown Jukhai Caste Chamar, SC, Address- Amanala Behind Primary School Ranjhi, Jabalpur. Registration No. S/13663/67- date of registration 15-12-67. Particulars of Mohan employed in OFK , father's name Jukhai, Caste ST, Address Amanala Behind Primary School, Ranjhi, Jabalpur Employment Registration No. S/13663/97 date of registration 15-12-67. That board of enquiry was constituted appointing Shri Murarilal, Works Manager. Board of enquiry recorded statements of shri K.Sadasivan, Sakhare, LDC, Mohan etc. that Board of Enquiry submitted his report. Particulars of Mohanlal working in GIF and Mohan employed in OFK are given in para 4 of the written statement. Card No. of Mohan working in Ordnance Factory Khamaria is shown 13663/67 whereas Card number of Mohanlal is shown S/13603/67. Chargesheet was issued to workman on 20-11-66. Charges alleged against workman pertain to workman was working as labour in Ordnance Factory, Jabalpur by impersonation adopting unfair, fraudulent means. That he had submitted false declaration at the time of securing employment in the factory. That workman working as labour was found involved in an act committed at the time of recruitment unbecoming on part of Government. That Bansilal secured employment as labour in ORK, Jabalpur by impersonation producing fake registration card No. S/13603/67 dated 15-12-67. Shri M.V.S.R.Chandramukti was appointed as Enquiry Officer, R.K.Dhar as Presenting Officer. Subsequently Shri Mukhopadhyay was appointed as Presenting Officer in place of Dhar. The details of enquiry conducted against workman are narrated in para-7. Statements of management's witnesses were recorded. Workman was allowed to cross examine all witnesses. The statements of two defence witnesses was recorded. Enquiry Officer submitted his findings recommending further investigation by Civil Authority. Disciplinary Authority disagreed findings and held that charges alleged against workman are proved. After issuing showcause notice, punishment of removal from service was imposed. 2nd party reiterates that punishment of removal is proper and legal.

5. Ist party workman submitted rejoinder at Page 8/1 to 8/3 reiterating contentions in statement of claim.
6. Management submitted rejoinder at Page 7/1 to 7/4 reiterating his contentions in Written statement.
7. As per order dated 13-9-13, enquiry conducted against workman is found legal.
8. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Negative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

9. Point No.1 The term of reference pertains to legality of order of removal of workman from service. As per order dated 13-9-13, enquiry conducted against workman is held legal. Question whether charges alleged against workman are proved or not needs to be decided considering evidence in Enquiry Proceedings. Enquiry Officer in his report Exhibit M-10 recorded his findings on Article 1 to 3 is established. In para8, Enquiry Officer observed the prosecution failed to prove charges framed except that the duplicate was not issued against Card No. S/13663/67. Enquiry Officer recommended that the case be referred to Civil Authorities for verification. It is clear that Enquiry Officer was confused while recording his finding. The findings of Enquiry Officer were revised by Disciplinary Authority giving the reasons holding that the charges against workman were proved. The order of punishment is produced at Exhibit M-11. Appeal preferred by workman was rejected. During course of argument, learned counsel for workman Vijay Tripathi emphasized that while passing order of removal, the evidence is not discussed. In M-11, Disciplinary Authority has endorsed that he had gone through the evidence. Representation submitted by workman. He had disagreed with the reasons given by Enquiry Officer. While passing order of dismissal, discussion of minute details of evidence cannot be expected. Order passed in appeal is produced at Exhibit M-14.
10. Documents of enquiry are produced. After receiving complaint, the matter was investigated and after receiving report of investigation dated 10-8-90, chargesheet was issued to workman. In Enquiry Proceedings,

statements of management's witnesses K.Sadasivan chargeman, R.C.Sakhare LDC. Statement of Mohan employee working as labour in OFK have been recorded. Statement of two defence witnesses was also recorded. Witness of management N.K.Yadav Employment Exchange Officer in his statement at Page 49 of record of enquiry says that Employment Exchange Card issued for 3 years and is renewed periodically. It is not possible to issue two Employment Exchange cards of same numbers. In reply to question, he says that fortnight time is required for furnishing details of Employment Exchange Card No. S/13663/67. On investigation, the particulars of Mohan Jukhai working in OFK were recorded, name of his father Jukhai caste-Chamar, Amranala Behind Primary School, Card No. 13663/67 in 1979 to GIF & 1983 to OFK. However Mr.Murarilal who had conducted enquiry was not examined.

11. In his statement, Shri K.Sadasivan chargeman has stated before Enquiry Officer that list forwarded by Employment Exchange, call letters were issued from Exchange, it seems that Registration No. S/13603/67. Statement of K.Sadasivan chargeman clearly shows that list of Employment Exchange, interview call No.44/83 dated 5-9-83 Card No. S-13603/67 was mentioned when individual was called for interview, he submitted his Employment Exchange Card bearing No. 13663/67. The age in the card indicated 1943 whereas in list sponsored by Employment Exchange was mentioned 1949. It refers to the date of birth. In his statement, R.C.Sakhare LDC says while preparing service book of workman, Employment Exchange Card and interview letter was checked by him were kept with service book. however in his further statement, said witness says workman had put his thump mark. He has not produced his documents about education. Workman has shown his inability to produce educational documents. Evidence of Shri R.C.Sakhare LDC is also clear that he had checked only interview call, Employment Exchange card was enclosed with the interview letter. Statement of workman was recorded. In his statement, workman says he is not educated. In 1990, he learnt to sign and he could read with continuity. Workman says he had committed mistake by signing the document. Date of birth was 28-12-56, his father was in service of OFK and retired around year 1981. His mother received pension. He has given details of his relatives Fulwabai-17 yrs, Suman Bai-14 yrs, Rekha bai- 12 yrs, Rupa Bai-10 yrs, Smt Foolbasiya bai was his mother. In his further statement, workman says Employment Exchange Card of his brother Mohan and himself were prepared on same date. He has declared his name as Sohanlal. When card was issued, his name was written Mohan, why he did not correct the card, workman did not explained. As he had received called letter. Statement of Mohan working in GIF was also recorded. He has given details of his family, name of rather was Jhukai, his father was dead. That his brother by name Mohan was in service from 980. His mother Fulbasia bai received pension. The attestation form submitted by workman at Page 8, age of workman was shown 27 years, his date of birth comes to 956. Statements of witnesses Mohanlal Choudhary shows that Mohan working in OFK is not related to him. That he used to sign in his name Mohanlal. He passed 7th standard at the time of joining service at GIF. He submitted original Employment Exchange Card at GIF. This card was never lost. He deposited certificate of passing 7th standard. Name of his mother was Draupati. After his appointment in GIF, he was staying in rental accommodation at different places. In his cross, he says he deposited Employment Card at GIF. He given its intimation to Employment Exchange. He claims ignorance whether anyone else by name Mohan is employed anywhere. That he is not related to Mohan employed in OFK. That he got employment on the basis of his Employment Card. In his statement, MVSR Murthy says he got information about E Card No. 13603/67, 13663/67 from records available. Card No. 13603/67 pertain to Mohan S/o Jhukai Card No. 13663/67 pertain to Raghunath S/o Shiv Chamar. The address of both persons are given in his statement. In his cross-examination, said witness says as per existing records, there is no entry w.r.t. Card No. S-13603/67. That there is no entry w.r.t. Card No. S-13663/67. The record are not available. Witness was unable to tell whether Card No. S-13663/67 was bearing seal of Employment Exchange.
12. Two witnesses Maniklal and Kallo were examined as Defence Witnesses. Their whole evidence is devoted on the point that Mohan working in OFK was residing in their locality. They were unable to tell other details of family of said Mohan. Evidence on record clearly shows that Card No. S-13603/67 was issued in name of Mohan working in GIF and not in name of workman. Card No. 13663/67 was issued in name of Raghunath and not in name of workman. Workman had submitted call letter in which Card No. 13603/67 was mentioned. As per statement of management's witness Sadasivan, when workman was called for interview he submitted Employment Exchange Card No. 13663/67. As per evidence, said card was issued in name of Raghunath. Any of the Employment Exchange Card were not issued in name of workman. It is clear that workman had secured employment on basis of Employment Exchange Card issued in name of other person. Evidence is clear that workman had not impersonated. Information was given by workman in attestation form. He had put his thump mark. Management's witness R.C.Sakhare, LDC when prepared service book, workman had not submitted documents about educational qualification, Employment Exchange Card was not produced. The evidence in enquiry proceedings proves that Ist party workman secured employment as labour B Grade on the basis of Employment Exchange Card in name of other persons and as such adopting unfair means. However charge of impersonation cannot be proved. Charge No.2 about submitting false declaration also cannot be proved. As management's witness Sakhare LDC did not take care while preparing service book. evidence doesnot show information submitted by workman in attestation form was false as Employment

Exchange Card is not mentioned in attestation form. Article 3 alleged against workman pertains to Ist party workman functioning in OFK as labour B Grade when workman was not holding Employment Exchange Card under which he claimed the employment conduct of workman is certainly of nature of unbecoming on part Government Servant. In this regard, learned counsel for Ist party Shri Vijay Tripathi relies on ratio held in case between

Union of India and others versus Gyan Chand Chattar reported in 2009(12)SCC-78. Their lordship dealing with service law held standard of proof in Departmental Enquiry. The proof and suspicion are different.

Ratio held in case between Roop Singh Negi versus Punjab National Bank and others reported in 2009(2)SCC-570. Their Lordship held mere production of documents is not enough, contents of documentary evidence has to be proved by examining witnesses.

Ratio held in both cases cannot be applied to present case. Evidence of management's witness discussed above is clear that either of the Card No. S-13663/67 & S-13603/67 were not issued in name of workman. Both the cards were issued in name of other persons. there is no question of proving FIR. Findings of competent authority are supported form evidence of management's witness. Learned counsel for 2nd party Shri A.K.Shashi relied on ratio held in case between-

R.S.Saini versus State of Punjab and others reported in 1999(8)SCC-90. Their Lordship dealing with scope of judicial review held if there is some evidence to reasonably support finding of inquiring authority the court in exercise of its writ jurisdiction would not reverse the finding on the ground of insufficiency of evidence.

In case between State Bank of India versus Ramesh Dinkar Punde reported in 2006(9)SCC-212. Their Lordship dealing with scope of judicial review held re-appreciation of evidence is not permissible.

In case of State of Haryana and another versus Ratan Singh reported in 1977(2)SCC-491. Their Lordship held in Domestic enquiry, strict rules of evidence not applicable but fair play and natural justice applies.

In case between West Bokaro Colliery versus Ram Pravesh Singh reported in 2009-I-LLJ-220(SC). Their Lordship held standard of proof in departmental enquiry proceedings is different from that of criminal cases.

CCS CCA Rule 15(2) provides that Disciplinary Authority can disagree with findings of Enquiry Officer giving the tentative reasons. Disciplinary Authority before disagreeing with the findings of Enquiry Officer had given opportunity to Ist party workman for submitting his representation.

Considering ratio in above cited cases, evidence of management's witnesses discussed above needs no re-appreciation. Evidence is sufficient to establish partly charge No.1 and charge No.3 fully proved. Accordingly I record my finding in Point No.1.

13. Point No.2- As per my finding in Point No.1 Article of charge No.1 is partly proved to the extent that workman secured employment as labour Grade B on the basis of Employment Exchange Card issued in name of other person. Such conduct on his part is of nature of unbecoming on part of Government servant. Question remains for consideration is whether workman is entitled for reinstatement with backwages. Charge of impersonation is not established. Evidence on record is clear that workman had secured employment using Employment Exchange Card of other persons. However he had not submitted false information in attestation form workman had put his thump mark on attestation form. The gravity of the charges proved against workman is of lesser gravity than original charges alleged against him about personation and submitting false declaration. Evidence of management's witness Sakhare LDC was not diligent while preparing service book of Ist party workman. Workman was engaged as labour Grade B since 2-1-84 till his removal from 29-7-99 for about 15 years. Considering above aspects of the matter, punishment of removal from service appears too harsh. In my considered view, the punishment of removal deserves to be modified to compulsory retirement. Accordingly I record my finding in Point No.2.

14. In the result, award is passed as under:-

- (1) The action of the management of Ordnance Factory, Khamaria, Jabalpur (MP) in removing the services of Shri Mohan is not legal. Punishment of removal is modified to punishment of compulsory retirement.
- (2) 2nd party is directed to allow all retiral benefits to workman as per rules.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 28 जून, 2017

का.आ. 1585.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वरिष्ठ अधीक्षक टेलीग्राफ यातायात, इंदौर एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (केस सं सीजीआईटी/एलसी/आर/26/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-40012/274/2001-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 28th June, 2017

S.O. 1585.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R/26/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Senior Superintendent Telegraph Traffic, Indore and their workman, which was received by the Central Government on 08.06.2017.

[No. L-40012/274/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/26/2002

Smt. Rekha Bai, Deepak Saxena,
Ankit Saxena, Anjali Saxena- LRs of
Late Shri S.N.Saxena,
C/o Shri Dinesh Nigam,
Lokmanya Tilak School,
Opp Lind Gate, Vivekanand Colony,
Chitragupt Bhaw,
Ujjain

...Workman

Versus

Sr. Supdt. Telegraph Traffic,
Indore Division,
Indore

...Management

AWARD

Passed on this 27th day of April, 2017

1. As per letter dated 23-1-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-40012/274/2001-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Sr.Supdt. Telegraphy Traffic, Indore Division, Indore in terminating the services of Shri S.N.Saxena w.e.f. 1-5-84 is justified ? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 4/1 to 4/2. Case of workman is that in 1972, he was engaged on daily wages, his services were confirmed as telegraphman on 24-4-84. That his services were terminated on 25-2-85 without any reasons. That he completed 240 days continuous service during each of the year. At the time of termination of his services, he was not served notice. Salary in lieu of notice was not paid to him, he was not paid retrenchment compensation. After termination of his service, junior employees were continued. Policy of first come last go was not followed. Termination of his service is in violation of Section 25 N of ID Act. Workman further submits he was not given termination order in writing as per the standing orders. He was not served chargesheet, enquiry was not conducted against him. On complaint by 2nd party, he was prosecuted for offence under Section 420, 468, 465 IPC in Criminal Case 73/99 before JFC, Ujjain. He was acquitted in

said case on 3-8-00. Termination of his service is illegal. On above contentions, Ist party prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 8/1 to 8/3 opposing claim of Ist party. That schedule of reference shows termination of Ist party on 1-5-84. Services of Ist party were terminated on 25-2-85 and not on 1-5-84. The services of Ist party were terminated on 25-2-85 and not on 1-5-84 as referred. Therefore reference has become invalid and infructuous. 2nd party further contends that workman was not engaged on daily wages as claimed by workman. If workman as appointed on temporary basis on 1-5-84 as per letter dated 24-4-84. The contentions of workman in statement of claim are incorrect. As per letter dated 22-2-85 from Sr. Suptd. Telegraph, office Indore, services of workman were terminated on 25-2-85. 2nd party denies that termination of workman is illegal. It is contented that workman was habitually remaining absent and not performing his duty. His performance was poor. That in letter of appointment dated 24-4-84, the services of workman can be terminated any time without notice or assigning any reasons. During service period, workman was charged for offence under 465 IPC as he produced false marksheet for getting job. Workman was imprisoned for some months. It is alleged that workman was involved in rash driving and other illegal activities. Management has lost confidence in workman due to said behaviour. Workman is not entitled to any relief. His claim deserves to be dismissed.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Sr.Suptd. Telegraphy Traffic, Indore Division, Indore in terminating the services of Shri S.N.Saxena w.e.f. 1-5-84 is justified ?	Termination of workman from 22-2-85 is illegal.
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. Point No.1 The term of reference pertains to legality of termination of services of workman on 1-5-84. In Written Statement, 2nd party has contented that workman was not terminated on 1-5-84 rather he was terminated on 22-2-85. Termination of workman on 22-2-85 is not in dispute between parties. The date of termination mentioned in the schedule 1-5-84 is incorrect. It will not render dispute under reference illegal.

6. On the point, learned counsel for 2nd party Shri R.S. Khare relies on ratio held in case between-

Tata Iron & Steel Co.Ltd. reported in 2014-1-SCC L&S-183. Their Lordship considered that reference is to be worded. Reference presupposing respondent workmen are employees of appellant and that their services have been transferred to M/s. L. held is clearly defective as it doesnot take care of the correct and precise nature of dispute between the parties. On these suppositions, the limited scope of adjudication is confined to decide as to whether the appellant is under an obligation to take back these workmen in service. Their Lordship quashed the reference, directions issued to the Government to make fresh reference incorporating the real essence of the dispute without prejudging issues from either perspective.

Ratio cannot be applied to case at hand. the date of termination shown in the order of reference is incorrect 1-5-84, the services of workman were undisputedly terminated on 22-2-85. Turning to merits of the controversy between parties whether termination of workman is illegal, evidence on record needs to be considered.

7. Ist party filed affidavit of his evidence stating that he was engaged on daily wages in 1972. On 24-4-82, he was appointed as telegraphman issuing the appointment order. his services were terminated on 25-2-85. He worked more than 240 days during each of the years. That more than 100 employees are working in 2nd party. Without holding enquiry, his services were terminated, he was paid retrenchment compensation. Chargesheet was not issued to him. He was prosecuted in criminal case 73/99 for offence under Section 420, 468, 465. He was acquitted in criminal case on 3-8-00. That he received order dated 11-11-75, he was continued in service. Termination of his service on 25-2-85 is illegal. Ist party workman in his cross says he passed 8th standard. He knows title English he had filed statement of claim after receiving copy of order of reference. He had read order of appointment and attended duty at Ujjain. Workman has admitted contents of Exhibit M-1 are correct.

8. Management's filed affidavit of witness stating that he was appointed on daily wages on 24-4-84. His services were terminated on 22-2-85. He completed more than 240 days continuous service. His services were not terminated on 1-5-84. That he had worked more than 240 days. Management's witness in his cross says that workman has produced bogus documents of passing 8th standard exam. Bogus marksheet was produced therefore services of workman were

terminated. Any document is not available in that regard. In order of termination Exhibit W-1, reasons for termination are not mentioned. Management's witness explained that service record of workman as not proper. He was remaining absent from duty. Therefore his services were terminated. Above reasons are not mentioned in order of termination Exhibit W-2. Remaining absent from duty is covered as misconduct. There is no document that workman was served with chargesheet or any enquiry was conducted against him. In reply to Exhibit W-3, management had written letter Exhibit W-4. Management's witness claims ignorance about the documents of 1975 and document dated 25-2-85. He could not produce the documents. Management's witness admits that documents about seniority are not available. Workman was not paid retrenchment compensation.

9. Turning to documentary evidence, Exhibit W-1 is order of appointment dated 24-4-84 workman was appointed as temporary telegraphman on temporary basis pay scale Rs.196-3-220. Exhibit W-2 is order of termination of workman dated 22-2-85, W-29 is copy of same order of termination reasons for termination are not mentioned in W-2(a) Exhibit W-3 is application submitted by workman for reinstating him in service after his acquittal in criminal case on 3-8-00. Exhibit W-4 is letter given by management. Management had not taken any action after acquittal of workman. The instructions were letter was forwarded to the central office for information and appropriate action. Exhibit W-5 is copy of judgment in criminal case. Ist party workman was acquitted on 3-8-00. Reading of judgment Exhibit W-5 shows that workman was prosecuted on report dated 22-7-85 by Sr.Suptd Telegraph, Indore. However it is difficult to comprehend when report was submitted by Sr. Telegraph Indore on 22-7-85, how criminal case was registered in 1999.

10. Workman has produced appointment letter Exhibit W-6 which was issued on 10-11-75. Evidence of workman is supported by Exhibit W-6 that he was appointed on 10-11-75. His services were terminated on 22-2-85. The evidence of management's witness that workman was appointed first time on 24th April cannot be relied in view of appointment letter Exhibit W-6. The evidence of management's witness is about reasons of termination of service is not consistent. His evidence is silent about prosecution of workman from report of Sr. Suptd, telegraph Division Indore. Evidence on record shows that workman was continuously working since his appointment till date of his termination. Workman worked more than 240 days during each of the year. His services were terminated without notice. Besides above, workman was acquitted in criminal case as per judgment Exhibit W-5 in August 2000. On his application Exhibit W-3, management did not take action, letter was forwarded to the superior authorities. Ist party workman is challenging termination of his service on the ground that he was not paid retrenchment compensation. No enquiry was conducted against him. Management's witness in his cross says documents are not available about payment of retrenchment compensation to workman or enquiry initiated against him.

11. Learned counsel for Ist party Gehlod relies on ratio held in case between-

G.M.Tank versus State of Gujarat and others reported in 2006-SCC(L&S) 1121. Their Lordship dealing with acquittal in criminal trial and sustainability of dismissal of employee concerned in case departmental enquiry and criminal proceedings based on same set of facts, charges and evidence and witnesses. No evidence against employee to hold him guilty. Employee honourably acquitted in criminal trial during pendency of proceedings challenged dismissal. Finding to contrary recorded in departmental proceedings in such case held unjust, unfair and oppressive dismissal order not sustainable.

In present case, 2nd party management did not initiate enquiry. W.r.t. allegations that workman had produced bogus marksheet of examination or his performance was not proper. Neither the management requested permission to prove said misconduct. Considering ratio in above case, dismissal of workman after his acquittal in criminal case is illegal.

Learned counsel for workman relies on ratio held in case between Jaipur Development Authority versus Ramsahai reported in 2007(1)SCC(L&S) 518. Requirement of continuous work in terms of Section 25 B held the same is not a requirement under Section 25 G and H.

Rather the case of workman is after acquittal in criminal case, he requested for reinstatement in service which was not considered by the management. Ratio held in the case cannot be beneficially applied to case at hand.

12. Learned counsel for 2nd party Shri R.S. Khare relies on ratio held in case between-

Secretary, State of Karnataka and others versus Umadevi and others reported in 2006(4)SCC-1. Their Lordship dealing with casual labour/ temporary employee held such employees do not have any right to regular or permanent public employment.

In view of Ist party workman was appointed in 1975 and confirmed in 1984 as per Exhibit W-1, 6 ratio held in the case cannot be applied to case at hand.

13. Considering evidence on record, it is established that termination of services of workman on 22-5-85 is illegal for violation of Section 25-F of ID Act. Workman was acquitted in criminal case. Management did not seek permission

to prove any misconduct against him. Termination of services for any kind of misconduct without conducting enquiry is illegal. For above reasons, I record my finding in Point No.1 in Negative.

14. Point No.2- In view of my finding in Point No.1 termination of services of workman is illegal, question remains for consideration whether workman is entitled for reinstatement with backwages. Learned counsel for 2nd party Shri R.S. Khare relies on ratio held in case between-

Assistant Engineer, Rajasthan Development Corporation and another versus Gitam Singh reported in 2013(2)SCC(L&S) 369. Their Lordship considering termination of daily wager working for short period of 240 days only awarded compensation Rs.50,000.

In present case, workman was continuously working from November 75 till termination of his service 22-2-85. Ratio held in the case cannot be applied to case at hand.

Shri R.S. Khare also relies on ratio held in case between MP State Agro Industries Development corporation Ltd and another reported in 2006(2)SCC-716. Their Lordship dealing with casual labour and right to regularization held that only because a temporary employee completed 240 days would not confirm any legal right for regularization. That daily wager doesnot hold a post as he was not appointed in accordance with provisions of act..

Workman was appointed on 24-4-85 (W-1) . Again in 1975, as per Exhibit W-6), 2nd party has not pleaded any thing that the appointment of workman was contrary to any rules. Therefore ratio held in case cannot be applied to case at hand.

As per ratio held in Batala Coop Sugar Mills Ltd versus Sowaran Singh reported in 2005(8)SCC-481. Held ownus to prove 240 days continuous service lies on workman. Evidence of workman is cogent that he was continuously working from 1975 till termination of his service on 22-2-85. Workman has already established 240 days continuous service as discussed while dealing with Point No.1.

Shri R.S. Khare also relies on unreported judgment between Union of India versus Ravendra Chandra Banerjee . I have gone through the above cited judgment. The facts of present case are not comparable. The judgment cannot be applied to present case.

Considering that services of workman are terminated in violation of Section 25-F of ID Act. After his acquittal in criminal case, workman was not allowed to resume duty. In view of judgment in G.M.Tank versus State of Gujarat and others reported in 2006-SCC(L&S) 1121, dismissal of workman is illegal and therefore workman deserves to be reinstated in service. So far as question of backwages is concerned, workman was terminated in 1985. He did not immediately raised dispute. Only after his acquittal in criminal case on 3-8-00, workman prayed for his reinstatement and dipute has been referred on 1-7-02. Workman had died and his LRs are brought on record. Death certificate produced on record shows workman died on 6-1-16. Therefore reinstatement of workman is not possible. Considering date of termination and his acquittal in criminal case in August 2000, compensation Rs.2,50,000 would be appropriate. Accordingly I record my finding in Point No.2.

15. In the result, award is passed as under :-

(1) The action of the management of Sr.Suptd. Telegraphy Traffic, Indore Division, Indore in terminating the services of Shri S.N.Saxena w.e.f. 1-5-84 is illegal.

(2) Management is directed to pay compensation Rs.2,50,000 to the workman .

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 28 जून, 2017

का.आ. 1586.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 23/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-22013/2/2017-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th June, 2017

S.O. 1586.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 08.06.2017.

[No. L-22013/2/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD**

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 12th day of April, 2017

INDUSTRIAL DISPUTE L.C. NO. 23/2010

Between :

Sri Sandella Sampath,
S/o Rajaiah,
C/o Smt. A. Sarojana,
Advocate, Flat No.G7,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Srirampur, Adilabad District.
2. The Colliery Manager,
M/s. Singareni Collieries Company Ltd.,
RK-5 Incline, Srirampur Area, Srirampur.
Adilabad District

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

Sri Sandella Sampath who worked as Badli Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. RKP/Per/R/008/5370 dated 24.9.2002 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as Badli Filler on 7.6.2000 and he was regular to his duties till the end of the year 2000. But during the year 2001 Petitioner suffered with illness and other family problems. While the matters stood thus, charge sheet dated 4.2.2002 was issued to the Petitioner by the Respondents alleging that the Petitioner could work only for 73 days during the year 2001, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order No. RKP/Per/R/008/5370 dated 24.9.2002. It is stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 2001 was only on account of his ill-health and other family problems. But without considering any of his submissions, the Petitioner was

dismissed from service. It is also stated that the action of the Respondents management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered 2 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. RKP/Per/R/008/5370 dated 24.9.2002 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 6.7.2000 under dependent employment. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondents were constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 20.12.2011.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Sandella Sampath is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness and other family problems, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above fact but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. The authority has not considered any of the submissions of the Petitioner, and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Petitioner could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 26 years, he is now aged about 33 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondents, atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender and has worked

for more than one year under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Sandella Sampath is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Sandella Sampath is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

Proceeding No. RKP/Per/R/008/5370 dated 24.9.2002 issued by Respondent No.1 is declared as illegal and is hereby set aside. It is ordered that the workman Sri Sandella Sampath be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 12th day of April, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 28 जून, 2017

का.आ. 1587.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 40/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-22013/2/2017-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th June, 2017

S.O. 1587.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 08.06.2017.

[No. L-22013/2/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated : the 12th day of April, 2017**INDUSTRIAL DISPUTE L.C. NO. 40/2010****Between :**

Sri Barla Jayaraj,
S/o Manthaiah,
C/o Smt. A. Sarojana,
Advocate, Flat No.G7,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Area, Mandamarri,
Adilabad District.
2. The Dy. General Manager,
M/s. Singareni Collieries Company Ltd.,
MK-4 Incline, Mandamarri Area,
Mandamarri, Adilabad District

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

Sri Barla Jayaraj who worked as Badli Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. MMR/PER/D/072/6749 dated 27.12.2007 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as Badli Filler on 21.3.2000 and he was regular to his duties till the year 2004. But during the year 2005 the Petitioner suffered with 'Ameebic Liver Abscess C Brondal Asther' and other family problems. While the matters stood thus, charge sheet dated 16.10.2006 was issued to the Petitioner by the Respondents alleging that the Petitioner remained absent during the year 2005, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order No. MMR/PER/D/072/6749 dated 27.12.2007. It is

stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 2005 was only on account of his ill-health and other family problems. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered 5 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. MMR/PER/D/072/6749 dated 27.12.2007 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 24.3.2000. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondents were constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 17.9.2011.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. **In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Barla Jayaraj is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I** : During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to 'Ameebic Liver Abscess C Brondal Asther' and other family problems, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above fact but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. The authority has not considered any of the submissions of the Petitioner, and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Petitioner could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family

members. He has already realised his mistake and has taken shelter in the court at the age of 32 years, he is now aged about 39 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondents, atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender and has worked for more than five years under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Barla Jayaraj is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Barla Jayaraj is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

Proceeding No. MMR/PER/D/072/6749 dated 27.12.2007 issued by Respondent No.1 is declared as illegal and is hereby set aside. It is ordered that the workman Sri Barla Jayaraj be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 12th day of April, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 28 जून, 2017

का.आ. 1588.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 5/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-22013/2/2017-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th June, 2017

S.O. 1588.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 08.06.2017.

[No. L-22013/2/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 12th day of April, 2017

INDUSTRIAL DISPUTE L.C. NO. 5/2010

Between :

Sri Muthyala Ram Babu,
S/o Sanni Babu,
C/o Smt. A. Sarojana,
Advocate, Flat No.G7,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Area, Mandamarri,
Adilabad District.
2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
Kasipet Mine, Mandamarri Area,
Mandamarri, Adilabad District

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

Sri Muthyala Ram Babu who worked as Badli Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. MMR/PER/D/072/4683 dated 14.9.2007 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the

Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows:**

The Petitioner was appointed as a Sweeper (Night Soil) and he was regular to his duties till the year 2003. But during the year 2004 the Petitioner suffered with illness and other family problems like illness of his wife. While the matters stood thus, charge sheet dated 15.2.2005 was issued to the Petitioner by the Respondents alleging that the Petitioner absented for duty during the year 2004, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one enquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order No. MMR/PER/D/072/4683 dated 14.9.2007. It is stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 2004 was only on account of his ill-health and other family problems. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered 14 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. MMR/PER/D/072/4683 dated 14.9.2007 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 11.11.1990 and he was working at Kasipet Mine of Mandamarri Area. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view, and lastly, the Respondents were constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 24.11.2010.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. **In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Muthyala Ram Babu is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness and other family problems, such as ill-health of his wife, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above fact but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered

his case while imposing punishment. The authority has not considered any of the submissions of the Petitioner, and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Petitioner could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 38 years, he is now aged about 45 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondents, atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender and has worked for more than 14 years under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Muthyala Ram Babu is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Muthyala Ram Babu is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

Proceeding No. MMR/PER/D/072/4683 dated 14.9.2007 issued by Respondent No.1 is declared as illegal and is hereby set aside. It is ordered that the workman Sri Muthyala Ram Babu be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 12th day of April, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence**Witnesses examined for the Petitioner**

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 28 जून, 2017

का.आ. 1589.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 46/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-22013/2/2017-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th June, 2017

S.O. 1589.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 08.06.2017.

[No. L-22013/2/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated : the 13th day of April, 2017**INDUSTRIAL DISPUTE L.C. NO. 46/2009****Between :**

Sri Gattu Devaji,
S/o Mallaiah,
C/o Smt. A. Sarojana,
Advocate, Flat No.G7,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri,
Adilabad District.
2. The Colliery Manager,
M/s. Singareni Collieries Company Ltd.,
KK-5A Incline, Mandamarri,
Adilabad District

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates
For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

Sri Gattu Devaji who worked as Coal Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. KK5A/97/5.disp/2193 dated 15.11.1997 issued by Respondent No.2 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as badli filler on 20.5.1990 and later he was confirmed as Coal Filler in the year 1995. It is submitted that, if the past record of the Petitioner is glimpsed, it can be made known that he met with mine accident on 6.8.1991, due to which he sustained injury on his right eye brow, even then, he rejoined in the duties in a short time to work. The Petitioner was regular to his duties till the year 1995. But during the year 1996, the Petitioner suffered with Pluantralgian with raised ESR of one year, for which he was treated at Area Hospital of 1st Respondent at Bellampally. While the matters stood thus, charge sheet dated 28.4.1997 was issued to the Petitioner by the Respondents alleging that the Petitioner absented for duty during the year 1996, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted, and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, a show cause notice dated 23/25.11.2005 was issued and the Petitioner's name was removed from services vide office memo No. KK5A/97/5.disp/2193 dated 15.11.1997. It is stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 1996 was only on account of his ill-health and other family problems. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered five years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. KK5A/97/5.disp/2193 dated 15.11.1997 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 18.5.1990 as Badli Filler and he was regularised as Coal Filler subsequently. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondents were constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 28.2.2012.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. **In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Gattu Devaji is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above fact but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. The authority has not considered any of the submissions of the Petitioner, and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Petitioner could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 44 years, he is now aged about 53 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondents, atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender and has worked for more than 5 years under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Gattu Devaji is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Gattu Devaji is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

Proceeding No. KK5A/97/5.disp/2193 dated 15.11.1997 issued by Respondent No.1 is declared as illegal and is hereby set aside. It is ordered that the workman Sri Gattu Devaji be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of

attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 13th day of April, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 28 जून, 2017

का.आ. 1590.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 40/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-22013/2/2017-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th June, 2017

S.O. 1590.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 08.06.2017.

[No. L-22013/2/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 13th day of April, 2017

INDUSTRIAL DISPUTE L.C. NO. 40/2008

Between :

Sri Avula Swamy,
S/o Durgaiiah,
C/o Smt. A. Sarojana,
Advocate, Flat No.G7,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Area, Mandamarri,
Adilabad District.
2. The Colliery Manager,
M/s. Singareni Collieries Company Ltd.,
MK-4 Incline, Mandamarri Area,
Mandamarri, Adilabad District

...Respondents

Appearances:

- For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates
- For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

Sri Avula Swamy who worked as Coal Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. MMR/PER/D/072/6027 dated 18.11.2007 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows:**

The Petitioner was appointed as badli filler on 1.1.1993 and later he was confirmed as Coal Filler in the year 1995. The Petitioner was regular to his duties till the year 2004. But later on the Petitioner suffered with illness and other family problems. While the matters stood thus, charge sheet dated 21.8.2005 was issued to the Petitioner by the Respondents alleging that the Petitioner absented for duty during the year 2005, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order No. MMR/PER/D/072/6027 dated 18.11.2007. It is stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 2005 was only on account of his ill-health and other family problems. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered 12 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. MMR/PER/D/072/6027 dated 18.11.2007 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 4.1.1993 as Badli Filler and he was appointed as Coal Filler with effect from 1.9.1995. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the

punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 19.9.2011.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. **In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Avula Swamy is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness and family problems, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above fact but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. The authority has not considered any of the submissions of the Petitioner, and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Petitioner could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 35 years, he is now aged about 44 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondents, atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender and has worked for more than 12 years under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Avula Swamy is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Avula Swamy is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

Proceeding No. MMR/PER/D/072/6027 dated 18.11.2007 issued by Respondent No.1 is declared as illegal and is hereby set aside. It is ordered that the workman Sri Avula Swamy be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 13th day of April, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 28 जून, 2017

का.आ. 1591.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 150/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-22013/2/2017-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th June, 2017

S.O. 1591.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 150/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 08.06.2017.

[No. L-22013/2/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 18th day of April, 2017

INDUSTRIAL DISPUTE L.C. NO. 150/2006

Between :

Sri J. Narasimha Swamy,
S/o Narasimha Murthy,
C/o Smt. A. Sarojana,

Advocate, Flat No.G7,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Kothagudem Area,
Kothagudem, Khammam District
2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
5B Incline, Kothagudem Area,
Kothagudem, Khammam District

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

Sri J. Narasimha Swamy who worked as Shot Firer (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. KGM/PER/7/2340 dated 16.8.2003 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as TGM on 22.11.1974 and later he was promoted as Route Bolting Mazdoor, thereafter he was further promoted as Shot Firer in the year 1986. The Petitioner was regular to his duties till the year 2002. On account of GB Syndrome, the Petitioner's Son aged about 19 years lost movement of most of the parts of his body, such as hands, legs and also speech and became bed ridden. It is submitted that, the Petitioner has taken his son to the company's hospital, who in turn referred him to Osmania General Hospital, Hyderabad. Accordingly, the Petitioner's son was given treatment at Osmania Hospital, Hyderabad, thereafter the Petitioner's son once again admitted to the company's Main Hospital in July, 2002. Even thereafter, as there was no improvement, the Petitioner took him to various hospitals at Vijayawada, Kakinada. As there was no other male member in his family, the Petitioner accompanies his son to all the hospitals during the year 2002. Ultimately, the Petitioner's son could recover from the illness, to some extent. While the matters stood thus, charge sheet dated 11.1.2003 was issued to the Petitioner by the Respondents alleging that the Petitioner absented for duty during the year 2002, which amounts to misconduct under company's Standing Order No.25.25 and 25.31. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service with effect from 20.8.2003 vide order No. KGM/PER/7/2340 dated 16.8.2003. It is stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 2002 was only on account of his son's ill-health. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered 18 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. KGM/PER/7/2340 dated 16.8.2003 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 22.1.1974 and he was promoted as Roof Bolting Mazdoor with effect from 12.11.1979. Subsequently, he was promoted as Shot Firer-D Grade with effect from 1.6.1987. The Petitioner was

promoted as SF Grade-C with effect from 1.10.1997. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view, and lastly, the Respondent was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the Learned Counsel for the Petitioner admitting the validity of the domestic enquiry to be legal and valid, the domestic enquiry conducted in the present case is held as legal and valid vide order dated 19.1.2010.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. **In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri J. Narasimha Swamy is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to the illness of his Son the Petitioner could not be able to attend his duty sincerely. The Petitioner's Son who was aged about 19 years lost movement of most of the parts of his body, such as hands, legs and also speech and he was bed ridden on account of GB syndrome. It is submitted that, the Petitioner has taken his son to the company's hospital, who in turn referred him to Osmania General Hospital, Hyderabad, and even thereafter, as there was no improvement, the Petitioner took him to various hospitals at Vijayawada, Kakinada. As there was no other male member in his family, the Petitioner accompanies his son to all the hospitals during the year 2002. Ultimately, the Petitioner's son could recover from the illness, to some extent. Even in his show cause the Petitioner has mentioned the above facts but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his Son's illness, he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. The authority has not considered any of the submissions of the Petitioner, and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to the illness of his son and other family problems, the Petitioner could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 53 years, after three years of dismissal from service, he is now aged about 64 years and has already attained the age of superannuation, and at this age he is searching ways and means to provide bread and butter to his family members. Admittedly due to the illness of his son the Petitioner was constrained to remain absent from duty and mentioned the above facts in his explanation; but the Enquiry Officer did not consider his case sympathetically, and held the Petitioner guilty of charges. The Disciplinary Authority while imposing punishment has also not considered the plight of the Petitioner and has imposed capital punishment to him. Admittedly, several modes of punishment are enumerated in company's Standing Orders, instead of imposing lenient punishment, capital punishment has been imposed. The

Petitioner is a first offender and has worked for more than 29 years under the Respondents. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri J. Narasimha Swamy is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri J. Narasimha Swamy is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for his reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But unfortunately, during pendency of this case the Petitioner has already attained superannuation. He has not approached this Tribunal soon after his dismissal from service. Therefore, in the opinion of this Tribunal the Petitioner is not entitled to get all other reliefs as claimed in his claim petition. But he is only entitled to be re-instated in service to get all his terminal benefits after superannuation without back wages.

Thus, Point Nos. II & III are answered accordingly.

ORDER

Proceeding No. KGM/PER/7/2340 dated 16.8.2003 issued by Respondent No.1 is declared as illegal and is hereby set aside. It is ordered that the workman Sri J. Narasimha Swamy be reinstated into service to get all his terminal benefits after superannuation without back wages.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 18th day of April, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 29 जून, 2017

का.आ. 1592.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सब डीविजनल ऑफिसर (टेलीफोन) अलवर एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर के पंचाट (केस सं. सीआईटी 16/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.06.2017 को प्राप्त हुआ था।

[सं. एल-40012/20/93-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1592.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. C.I.T. 16/94) of the Central Industrial Tribunal, Jaipur as shown in Annexure, in the industrial dispute between the employers in relation to the Sub Divisional Officer (Telephone), Alwar and their workman, which was received by the Central Government on 12.06.2017.

[No. L-40012/20/93-IR (DU)]

RAJENDRA JOSHI, Dy. Director

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुरकेस नं० सी.आई.टी. 16/94

सी.आई.एस. नं. 02/14

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक
एल-40012/20/93- आई.आर.(डी.यू-3) दिनांक 13.7.1994.

सोहनलाल पुत्र श्री रामगोपाल द्वारा:- श्री अशोक शर्मा, 2/232, काला कुआ, हाउसिंग बोर्ड, अलवर

— प्रार्थी

बनाम

सब डिवीजनल आफिसर (टेलीफोन) अलवर

— अप्रार्थी

पीठासीन अधिकारी : गिरीश कुमार शर्मा, आर.एच.जे.एस.

उपस्थित :

प्रार्थी की ओर से विद्वान प्रतिनिधि श्री आर.सी. जैन,

अप्रार्थी की ओर से विद्वान प्रतिनिधि श्री तेजप्रकाश शर्मा एवं श्री शिवाराम चौधरी

दिनांक 19.04.2017

अधिनिर्णय

भारत सरकार के श्रम मंत्रालय की आज्ञा क्रमांक एल-40012/20/93- आई.आर.(डी.यू-3) दिनांक 13.7.1994 से निम्न अनुसूची का विवाद अधिनिर्णय हेतु इस अधिकरण को प्राप्त हुआ है।

“Whether the action of the SDO[T], Alwar and the T.D.E alwar in terminating the services of Shri sohanlal a muster roll worker firstly in 1981 and finally w.e.f. 18-1-1989 is justified ? If not, what relief he is entitled to and from whar date?”

प्रार्थी सोहनलाल की ओर से स्टेटमेंट ऑफ क्लेम पेश हुआ जिसके अनुसार तथ्य इस प्रकार हैं कि प्रार्थी की नियुक्ति विपक्षी संस्थान में जनवरी-1980 में हुई थी। अपनी नियुक्ति के पश्चात प्रार्थी निरन्तर विपक्षी संस्थान में कार्य करता रहा तथा मार्च-1981 तक प्रार्थी ने विपक्षी के यहां निरन्तर कार्य किया उसके पश्चात अप्रार्थी ने प्रार्थी को अकारण ही सेवामुक्त कर दिया। तथा सेवामुक्त करने के बारे में कोई आदेश भी जारी नहीं किया। उसके पश्चात् उसके फरवरी 82 से जनवरी 84 तथा जनवरी 88 से 18.01.1989 तक की अवधि में कुछ समय के लिए कार्य पर लगा लिया गया और दिनांक 18.01.1989 के बाद प्रार्थी को कार्य पर नहीं लिया गया और इस तरह उसे फिर दिनांक 18.01.1989 को सेवामुक्त कर दिया गया। उसे सेवामुक्त किये जाने से पूर्व न तो कोई नोटिस दिया गया और न ही नोटिस वेतन का भुगतान किया गया। प्रार्थी को औद्योगिक विवाद अधिनियम की धारा-25-एफ के अनुसार मुआवजे का भुगतान भी नहीं किया गया। इस तरह अप्रार्थी ने औद्योगिक विवाद अधिनियम की धारा-25-एफ का उल्लंघन किया है। विपक्षी संस्थान में प्रार्थी से जूनियर अनेकों श्रमिक अप्रार्थी को सेवामुक्त किये जाते समय भी कार्यरत थे और अभी भी कार्यरत हैं तथा अप्रार्थी ने नये श्रमिकों को भी भर्ती किया है तथा ना ही उसे सेवामुक्त किये जाने से पूर्व न तो उसे कोई आरोपपत्र ही दिया गया और न ही कोई घरेलु जांच की गई, इससे स्पष्ट है कि प्रार्थी को किसी दुराचरण के कारण सेवामुक्त नहीं किया गया तथा प्रार्थी को अनुचित एवं अवैध तरीके से सेवामुक्त कर दिया है। निवेदन किया गया है कि न्यायाधिकरण यह घोषित करे कि अप्रार्थी द्वारा प्रार्थी की मार्च 81 में की गई सेवामुक्ति अनुचित एवं अवैध है तथा यह भी घोषित किया जावे कि प्रार्थी जनवरी 1980 से ही निरन्तर सेवा में माने जाने का अधिकारी है तथा यह भी घोषित किये जाने का निवेदन किया गया है कि प्रार्थी की सेवाएं निरन्तर माने जाने के कारण मिलने वाले समस्त आर्थिक व अन्य लाभ प्राप्त करने का प्रार्थी अधिकारी है।

अप्रार्थी ने क्लेम के कथनों का विरोध करते हुए जवाब प्रस्तुत कर अभिकथन किया है कि प्रार्थी को दैनिक वेतनभोगी मजदूर के रूप में कार्यालय द्वारा मस्टररोल पर आकस्मिक कार्य पर उपलब्धता के अनुसार एक निश्चित समयावधि के लिए रखा गया था। प्रार्थी मार्च 1981 में बिना किसी सूचना के कार्य से अनुपस्थित हो गया था 10 माह तक कार्य पर नहीं लौटा। अतः ऐसी परिस्थिति में जबकि प्रार्थी स्वयं ही कार्य छोड़कर अनुपस्थित हो गया और न ही उसने अपना कोई पता छोड़ा। इस प्रकार प्रार्थी बिना किसी सूचना के स्वयं अनुपस्थित हुआ है तथा सितम्बर 1982 में कार्य हेतु उपस्थित हुआ एवं दैनिक वेतन भोगी के रूप में चार माह कार्य कर पूर्व की भाँति ही पुनः कार्य से अनुपस्थित हो गया। इस प्रकार प्रार्थी फरवरी 1984 से दिसम्बर 1987 लगभग 47 महीने (3 साल 11 माह) तक अपनी इच्छानुसार अनुपस्थित रहा तथा इस अनुपस्थिति की किसी प्रकार की कोई भी सूचना कभी भी अप्रार्थी को नहीं दी और ना ही उसने अपना पता छोड़ा। प्रार्थी अपनी मनमर्जी से जब चाहा उपस्थित हो जाता था और जब चाहा छोड़ देता था। अप्रार्थी की ओर से अपने जवाब में

अभिकथन किया गया है कि प्रार्थी सन 1984 से 1987 लगभग चार वर्ष तक अप्रार्थी को बिना सूचना दिये अनुपस्थित रहा तथा इसी प्रकार सन 1988 में 193 दिवस कार्य कर प्रार्थी जनवरी 1989 से पूर्व कार्य से अनुपस्थित हो गया। अतः ऐसी परिस्थितियों में औद्योगिक विवाद अधिनियम 1947 की धारा-25 एफ कतई लागू नहीं होती है। प्रार्थी का स्टेटमेंट ऑफ क्लेम पोषणीय नहीं होने से प्रार्थी का क्लेम खारिज किया जावे।

प्रार्थी की ओर से प्रार्थी साक्षी स्वयं सोहनलाल न्यायाधिकरण के समक्ष परीक्षित हुये हैं तथा अप्रार्थी की ओर से श्री बी.एल.मीणा को परीक्षित करवाया है।

उभय पक्षकारान के विद्वान प्रतिनिधिगण की बहस सुनी गई। पत्रावली का अवलोकन किया गया।

अब न्यायाधिकरण के समुख अवधारणीय बिन्दु यह है कि क्या प्रार्थी कर्मकार श्री सोहनलाल ने विपक्षी स्थापन में निरन्तर एक वर्ष या उससे अधिक विपक्षी संस्थान में निरन्तर एक वर्ष की सेवा में रहने बावजूद भी प्रार्थी श्रमिक को बिना एक माह का वेतन नोटिस दिए व बिना मुआवजे के छंटनी कर दी और विपक्षी नियोजक ने औद्योगिक विवाद अधिनियम 1947 की धारा-25 एफ. की पालना न करने से छंटनी अवैध है ?

इस संबंध में सर्वप्रथम प्रार्थी साक्षी सोहनलाल की साक्ष्य का अवलोकन करें तो इस साक्षी ने साक्ष्य कथन किया है कि उसको विपक्षी संस्थान ने सर्व प्रथम माह जनवरी 1980 में दैनिक वेतन भोगी श्रमिक के रूप में मस्टरोल पर रखा था तथा उसने माह मार्च 1981 तक निरन्तर कार्य किया। उसके पश्चात् उसे सेवामुक्त कर दिया गया। उसके पश्चात् माह फरवरी 1982 से माह जनवरी 1984 की अवधि में कुछ समय के लिये नियुक्ति दी गई तथा इसके पश्चात् माह जनवरी 1988 में उसको काम पर रख लिया फिर दिनांक 18.01.1989 को उसे पुनः सेवामुक्त कर दिया गया तथा उसको एक माह का नोटिस या नोटिस वेतन या छंटनी मुआवजा नहीं दिया गया तथा माह मार्च 1981 व दिनांक 18.01.1989 को सेवामुक्त किए जाते समय विपक्षी द्वारा कोई वरिष्ठता सूची भी जारी नहीं की गई तथा उससे जूनियर श्रमिक उसकी सेवामुक्ति किए जाने के वक्त कार्यरत थे तथा बाद में भी श्रमिक भर्ती किए गए तथा वह बेरोजगार रहा है। जिरह में इस गवाह ने बताया है कि नाली खोदने का कार्य करता था तथा उसको नौकरी से हटाने के बाद कहीं काम नहीं किया है तथा जिरह में इस गवाह ने बताया है कि उसकी नियुक्ति लिखित आदेश से की थी। इस गवाह ने जिरह में यह भी बताया है कि उसकी हाजिरी होती थी तथा जब काम होता तब उसे लगाया जाता व काम खत्म होने पर उसे हटा देते थे तथा उसे यह बात बता देते थे।

विपक्षी साक्षी श्री बी.एल.मीणा ने अभिसाक्ष्य दी है कि प्रार्थी श्रमिक को आकस्मिक कार्य की उपलब्धता होने पर उसे कार्य में समाप्त होने तक दैनिक वेतन भोगी के रूप में कार्यरत किया जाता था तथा यह प्रक्रिया में केवल लाईन के लिए गड्डे खोदना व टेलीफोन लाईन के खम्भे लगाना इत्यादि के लिए होती थी जो प्रोजेक्ट की उपलब्धता के कारण होती थी तथा प्रार्थी अपनी मर्जी के अनुसार कार्य पर उपस्थित होता तथा महिने व सालों तक कार्य छोड़कर चला जाता था तथा प्रार्थी ने लगातार एक कलेण्डर वर्ष में 240 दिवस तक कार्य नहीं किया है तथा प्रार्थी ने अप्रार्थी संस्थान में किसी अधिकारी को अपना पता दर्ज नहीं करवाया, ऐसी स्थिति में आकस्मिक कार्य के उपलब्ध होने पर प्रार्थी को सूचना नहीं भिजवायी जा सकती तथा संस्थान में न्यूनतम मजदूरी की दर कम थी इसलिए प्रार्थी दैनिक कार्य हेतु संस्थान में उपस्थित नहीं होता था।

जिरह में इस गवाह ने यह बताया है कि श्रमिक को लिखित में यह नहीं दिया था कि उसको निश्चित कार्य व निश्चित अवधि के लिए रखा जा रहा है तथा दैनिक वेतन भोगी को मस्टरोल रखी जाती है तथा श्रमिक ने माह जनवरी 1980 से माह मार्च 1981 तक व माह जनवरी 1988 से दिनांक 18.01.1989 तक विभाग के अधीन कार्य किया है, जिसका रिकार्ड उपलब्ध है जो न्यायालय में पेश नहीं किया है। जिरह में इस गवाह ने बताया है कि वह यह नहीं बता सकता कि माह जनवरी 1980 से मार्च 1981 तक व माह जनवरी 1988 से दिनांक 18.01.1989 तक की अवधि में कब-कब अनुपस्थित रहा, विवरण जवाब में दिया हुआ है तथा 193 दिवस में रविवार व अन्य अवकाश शामिल हैं या नहीं वह रिकार्ड देखकर बता सकता है तथा वह मस्टरोल लेकर नहीं आया है, विवरण न्यायालय में पेश नहीं किया है तथा माह मार्च 1981 के बाद कोई श्रमिक को रखा हो तो उसे पता नहीं है।

प्रार्थी के विद्वान प्रतिनिधि ने बहस की कि श्रमिक को माह जनवरी 1980 में दैनिक वेतन भोगी के रूप में मस्टरोल पर रखा था तथा माह मार्च 1981 तक कार्य पर रखा फिर सन 1982 से 1986 तक बीच बीच में कार्य पर रख लेते तथा माह जनवरी 1988 से दिनांक 18.1.1989 तक कार्य पर रखा उसके पश्चात् उसे काम पर नहीं रखा तथा प्रार्थी श्रमिक ने निरन्तर एक वर्ष से अधिक की सेवा में विपक्षी संस्थान में रहा है तथा उसने एक वर्ष में 240 दिवस से अधिक समय तक कार्य किया है तथा उसको बिना कारण के सेवामुक्त कर दिया। कोई नोटिस या नोटिस वेतन या छंटनी मुआवजा भी नहीं दिया गया है। इसलिए प्रार्थी श्रमिक की छंटनी औद्योगिक विवाद अधिनियम 1947 की धारा-25 एफ. के प्रावधान के विपरीत है। प्रार्थी के विद्वान प्रतिनिधि ने न्यायाधिकरण का ध्यान निम्न न्यायिक विनिश्चयों की ओर आकृष्ट किया है:-

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2. दुर्गापुर कैजुल वर्कर्स यूनियन बनाम फूड कारपोरेशन ऑफ इण्डिया,
2015 (144) एफ.एल.आर. 597
3. स्टेट ऑफ राजस्थान व अन्य बनाम श्री महेन्द्र जोशी व अन्य,
2003 (3) आर.एल.डब्ल्यू. 1966

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5. अनूप शर्मा बनाम एकजीक्यूटिव इंजीनियर पब्लिक हेल्थ नंबर 1, पानीपत,
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1999(4)एस एल आर 476.
9. डायरेक्टर, फिशरीज टर्मिनल डिवीजन बनाम भीखूभाई मेधाभाई छावड़ा,
2010लेब आई.सी. 1089 एस.सी.
10. मै0 मित्तल स्टील मैनुफैक्चरिंग कंपनी बनाम छोटाराम व अन्य,
2005(3)डब्ल्यू. एल.सी. 430.
11. मुनिसिपल कोरपोरेशन कोटा बनाम जज इण्डस्ट्रीयल ट्रिब्यूनल व अन्य,
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12. गोपाल कृष्णाजी काटकर बनाम मो0हाली लतीफ व अन्य,
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इसके प्रतिकार में विपक्षी के विद्वान प्रतिनिधि ने बहस की कि प्रार्थी श्रमिक दैनिक वेतन भोगी के रूप में जब विपक्षी संस्थान में कार्य होता तब रखा जाता था तथा कार्य समाप्त होने पर हटा दिया जाता था तथा प्रार्थी श्रमिक कोई नियमित श्रमिक नहीं था बल्कि केजुअल वर्कर था तथा वह कई बार लगातार अनुपस्थित भी रहा तथा उसका कोई सूचना के लिए पता भी नहीं था इसलिए उसको कार्य की व उसकी अनुपस्थिति की सूचना नहीं दी जा सकती थी तथा श्रमिक ने एक वर्ष में 240 दिवस कार्य भी नहीं किया है।

मैंने उभय पक्ष के विद्वान प्रतिनिधिगण की बहस पर मनन किया एवं माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय के उपरोक्त न्यायिक विनिश्चयों का सम्मानपूर्वक परिशीलन किया।

उभय पक्ष की साक्ष्य के विवेचन से यह तो स्थापित स्थिति है कि प्रार्थी श्रमिक ने माह जनवरी 1980 से माह मार्च 1981 तक तथा उसके पश्चात वर्ष 1982 से 1984 तक कभी कभी व माह जनवरी 1988 से दिनांक 18.01.89 तक दैनिक वेतन भोगी के रूप में मस्टरोल पर विपक्षी संस्थान के यहां नियोजन में रहा है तथा जहां तक विपक्षी के विद्वान प्रतिनिधि की यह बहस है कि प्रार्थी श्रमिक अनुपस्थित रहा है तथा लगातार 240 दिवस तक कार्य नहीं किया है तथा सूचना के लिए विभाग में पता नहीं दिया है इस तर्क के संबंध में न्यायाधिकरण का विनम्र मत यह है कि विपक्षी साक्षी श्री बी एल मीणा ने अपनी साक्ष्य में यह स्वीकार किया है कि प्रार्थी श्रमिक का मस्टरोल का व उपस्थिति का रिकार्ड विभाग में है जो पेश नहीं किया है तो फिर न्यायाधिकरण के विनम्र मत में प्रार्थी श्रमिक एक कलेण्डर वर्ष में कितना अनुपस्थित रहा उसका विपक्षी विभाग में दस्तावेजी अभिलेख होने के बावजूद भी पेश नहीं किया गया है तो फिर विपक्षी साक्षी के प्रार्थी श्रमिक की अनुपस्थिति के संबंध में प्रमाण रहित कथन (इप्सीडिक्सिट) से यह नहीं माना जा सकता कि प्रार्थी श्रमिक अनुपस्थित रहा हो क्योंकि जब विभाग ने सर्वोत्तम साक्ष्य उपलब्ध होने के बावजूद भी पेश नहीं की तो इस बात का प्रतिकूल अनुमान विपक्षी विभाग के विरुद्ध लगाया जा

सकता है कि प्रार्थी श्रमिक की अनुपस्थिति के संबंध में विपक्षी के अभिवाक में यथार्तता नहीं झलकती है तथा जब उभय पक्ष की साक्ष्य से यह स्थापित स्थिति है कि प्रार्थी श्रमिक ने एक कलेण्डर वर्ष में निरन्तर सेवा में रहा है तो फिर औद्योगिक विवाद अधिनियम 1947 की धारा-25बी के प्रावधान एवं माननीय राजस्थान उच्च न्यायालय के न्यायिक दृष्टांत 2010 लेब आई सी 1089 व माननीय राजस्थान उच्च न्यायालय के न्यायिक दृष्टांत 2016 (151) एफ एल आर 995 में प्रतिपादित सिद्धांत की रोशनी में जब प्रार्थी श्रमिक माह जनवरी 1980 से मार्च 1981 तक व माह जनवरी 1988 से दिनांक 18.1.1989 तक एक वर्ष से अधिक की निरन्तर सेवा में रहने से 240 दिवस एक कलेण्डर वर्ष में प्रार्थी न रहा हो यह विपक्षी विभाग ने स्थापित न करने से प्रार्थी की सेवा से दिनांक 18.1.1989 को हटाना औद्योगिक विवाद अधिनियम, 1947 की धारा-25 एफ. के प्रावधान का अतिलंघन होने से यह छंटनी अवैध है तथा जिसके लिए प्रार्थी श्रमिक को नोटिस या वेतन नोटिस या छंटनी मुआवजा भी विपक्षी संस्थान ने नहीं दिया है तथा प्रार्थी साक्ष्य से यह प्रकट है कि विपक्षी संस्थान ने उससे कनिष्ठ श्रमिक को नहीं हटाया तथा नये श्रमिक भी रखे गए हैं जिसके लिए विपक्षी साक्षी ने अपनी साक्ष्य में बताया है कि माह मार्च 1981 के बाद रखे हो तो उसे पता नहीं है। इसका तात्पर्य विपक्षी की इन्कारी नहीं है लेकिन सन 1989 के बाद रखे हो उसके लिए साफतौर से इन्कारी है चूंकि प्रार्थी श्रमिक ने यह मामला जब उसे यह मार्च 1981 में छंटनी की गई तब नहीं उठाकर दिनांक 18.1.1989 की छंटनी करने पर सन 1984 में उठाया गया है तथा प्रार्थी श्रमिक की उम्र लगभग 55 वर्ष से अधिक होना उसके शपथपत्र में दी गई उम्र को देखते हुए एवं मामले में आई तथ्य एवं परिस्थिति को देखते हुए प्रार्थी श्रमिक को डेली वेजर के पद पर बहाली किए जाने का औचित्य प्रकट न होने से उसे छंटनी मुआवजा मामले के तथ्य एवं परिस्थिति में तीन लाख रुपये दिलाया जाना न्यायोचित प्रतीत होता है। अतः उपरोक्त विवेचन के फलस्वरूप प्रार्थी श्रमिक श्री सोहनलाल का प्रथमतः 1981 में एवं अन्तिमतः 18.1.1989 को सेवा से पर्यावसान किया जाना विधि सम्मत व न्यायोचित नहीं होना पाया जाता है तथा प्रार्थी श्रमिक विपक्षी स्थापन से बतौर मुआवजा तीन लाख रुपये पाने का मुश्तहक है। अतः इस रेफरेंस का उत्तर उपरोक्तानुसार देते हुए निम्न अधिनिर्णय पारित किया जाना समीचीन प्रतीत होता है:-

अधिनिर्णय

अतः “विपक्षी सब डिवीजनल आफिसर टेलीफोन एवं टीडीई अलवर के द्वारा मस्टरोल कर्मकार श्री सोहनलाल की सेवा प्रथमतः 1981 में एवं अन्तिमतः दिनांक 18.01.1989 को सेवा पर्यावसान यानी छंटनी किया जाना विधि संगत एवं न्यायोचित नहीं पाया जाता है तथा प्रार्थी कर्मकार श्री सोहनलाल के मामले के तथ्य एवं परिस्थितियां में सेवा से अवैध रूप से छंटनी करने के कारण विपक्षी स्थापन से प्रार्थी तीन लाख रुपये बतौर क्षतिपूर्ति पाने का मुश्तहक है जो विपक्षी संस्थान प्रार्थी श्रमिक को अधिनिर्णय की तिथि से 6 माह में भुगतान करे अन्यथा उस राशि पर छह प्रतिशत वार्षिक ब्याज प्रार्थी श्रमिक पाने का हकदार होगा। मामले के तथ्य एवं परिस्थिति में पक्षकारान खर्चा अपना-अपना स्वयं वहन करेंगे।”

गिरीश कुमार शर्मा, न्यायाधीश

नई दिल्ली, 29 जून, 2017

का.आ. 1593.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अधीक्षक, डाक विभाग, जयपुर व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर के पंचाट (केस सं. सीआईटी 19/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.06.2017 को प्राप्त हुआ था।

[सं. एल-40012/255/94-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1593.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. C.I.T. 19/1996) of the Central Industrial Tribunal, Jaipur as shown in Annexure, in the industrial dispute between the employers in relation to the Superintendent, Dak Department, Jaipur & Others and their workman, which was received by the Central Government on 12.06.2017.

[No. L-40012/255/94-IR (DU)]

RAJENDRA JOSHI, Dy. Director

अनुबंध

न्यायाधीश, केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं० सी.आई.टी. 19/1996

रैफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क.
एल.-40012/255/94-आईआर.(डी.यू.) दि. 27.03.1996

राधेश्याम शर्मा पुत्र श्री गोविन्द नारायण शर्मा मार्फत श्री ऋषभ चंद जैन, 80,
बजरंग विहार, गोपालपुरा रेलवे फाटक के पास, जयपुर।

— प्रार्थी

बनाम

1. अधीक्षक, डाक विभाग, जयपुर-6
2. सहायक अधीक्षक, डाकघर, जयपुर नगर (पश्चिम), जयपुर।

—अप्रार्थीगण

पीठासीन अधिकारी : श्री गिरीश कुमार शर्मा, आर.एच.जे.एस.

उपस्थित

प्रार्थी की ओर से : श्री आर.सी. जैन
अप्रार्थीगण की ओर से : श्री सुरेन्द्र सिंह

दिनांक : 21.03.2017

अवार्ड

केन्द्र सरकार, श्रम मंत्रालय नई दिल्ली ने उपरोक्त आदेश के जरिये निम्न अनुसूची का विवाद अधिनिर्णय हेतु इस अधिकरण को दिनांक 9.4.1996 को प्राप्त हुआ है।

“Whether the action of the management of Subpt. of Post Office, Jaipur is Justified in dismissing the services of Shri Radhey Shyam Sharma? If not, to what relief the workman is entitled to and from what date?”

प्रकरण दर्ज रजिस्टर किया जाकर उभय पक्षकारान को नोटिस जारी किए गए। प्रार्थी की ओर से दिनांक 28.06.1999 को स्टेटमेंट ऑफ क्लेम पेश कर अभिकथन किया गया कि प्रार्थी राधेश्याम शर्मा की नियुक्ति दिनांक 09.01.1980 को अप्रार्थी सं० 2 के आदेश दिनांक 27.12.1979 से ई०डी०एम०ई० के पद पर हुई थी। प्रार्थी की सेवामुक्ति एजेन्ट सेवा एवं आचरण नियमावली 1964 के तहत अप्रार्थी सं० 2 के आदेश दिनांक 31.07.1991 द्वारा प्रार्थी को सेवामुक्त कर दिया जबकि प्रार्थी को सेवामुक्त करने से पूर्व कोई सुनवाई का अवसर नहीं दिया गया। प्रार्थी को दिनांक 20.07.1989 से उसकी नानी का देहांत हो जाने की सूचना ऑन ड्यूटी मिलने से इसकी सूचना रामसिंह अनु-डाकपाल को चार्ज देकर व 10 दिवस का अवकाश प्रार्थना पत्र देकर घर गया था। प्रार्थी के विरुद्ध 113/-रु० का स्टाम्प का अस्थाई गबन का जो आरोप लगाया गया है वह प्रार्थी के कार्यकाल का नहीं है फिर भी विभाग के आदेशानुसार राशि जमा कराये जाने पर प्रार्थी को दोषी माना है। प्रार्थी के ऊपर आरोप लगाने से पूर्व कभी डाक टिकटों का भौतिक सत्यापन नहीं हुआ था। प्रार्थी श्रमिक के विरुद्ध जांच प्राकृतिक न्याय के सिद्धांत के विपरीत कर दोषी माना है। जो अनुचित एवं अवैध है। अन्त में प्रार्थी श्रमिक के विरुद्ध सेवापृथक आदेश दिनांक 31.07.1991 को निरस्त कर सभी लाभ—परिलाभ दिलाये जाने की प्रार्थना की है।

विपक्षी विभाग द्वारा स्टेटमेंट ऑफ क्लेम का दिनांक 13.03.2000 को जवाब प्रस्तुत कर अभिकथन किया कि प्रार्थी की नियुक्ति अतिरिक्त विभागीय डाक वाहक के पद पर आदेश दिनांक 9.1.1980 द्वारा की गयी थी। प्रार्थी दिनांक 20.07.1989 से अनाधिकृत रूप से लगातार अनुपस्थित होने तथा दिनांक 18.07.89 को 113/-रु० का स्टाम्प कमी पाये जाने पर आरोप पत्र दिनांक 7.5.1990 को जारी किया गया। प्रार्थी श्रमिक बिना अवकाश स्वीकृत कराये एवं अनमुक्ति के निरन्तर 264 दिन अपने कार्य से अनुपस्थित रहा है। प्रार्थी श्रमिक को प्राकृतिक न्याय के सिद्धांतों के अनुसार जांच पूर्ण कर आरोप में दोषी पाये जाने पर सेवापृथक किया गया है। प्रार्थी श्रमिक द्वारा प्रस्तुत विवाद अतिरिक्त विभागीय एजेन्ट्स (सेवा व आचरण) नियमावली 1964 के अन्तर्गत आने से औद्योगिक विवाद अधिनियम के अन्तर्गत नहीं आता है। अन्त में प्रार्थी श्रमिक द्वारा प्रस्तुत क्लेम खारिज किए जाने की प्रार्थना की है।

न्यायाधिकरण के आदेश दिनांक 23.07.2015 द्वारा प्रार्थी श्रमिक के विरुद्ध की गयी विभागीय जांच को मेरे पूर्व पीठासीन अधिकारी द्वारा अशुद्ध व अनुचित घोषित किया गया है। उभय पक्षों की ओर से कोई साक्ष्य पेश नहीं हुई।

मैंने उभय पक्षों की बहस सुनी, पत्रावली का ध्यानपूर्वक अवलोकन किया।

प्रार्थी के विद्वान प्रतिनिधि ने बहस की कि प्रार्थी की नियुक्ति विपक्षी विभाग में अतिरिक्त विभागीय डाक वाहन के रूप में दिनांक 9.1.1980 को हुई थी तथा दिनांक 31.7.1991 को प्रार्थी के विरुद्ध एकतरफा कार्यवाही एवं प्राकृतिक न्याय के सिद्धांत के विपरीत कार्यवाही कर प्रार्थी को अवैध रूप से सेवामुक्त कर दिया तथा डाक विभाग उद्योग की तारीफ में आता है तथा विभागीय जांच को न्यायाधिकरण के आदेश दिनांक 23.07.2015 से अवैध घोषित कर दिया गया तथा जांच अशुद्ध होने के पश्चात् विपक्षी की कोई साक्ष्य पेश नहीं हुई इसलिए प्रार्थी की ओर से भी कोई साक्ष्य पेश नहीं की गई है तथा अप्रार्थी की प्रार्थी के खिलाफ आरोप के संबंध में कोई साक्ष्य नहीं होने से आरोप प्रमाणित नहीं है इसलिए प्रार्थी को सेवामुक्त किया जाना अवैध होने से सेवा में बहाल व पूर्ण वेतन व अन्य लाभ दिलाए जावें।

प्रार्थी के विद्वान प्रतिनिधि ने न्यायाधिकरण का ध्यान निम्न न्यायिक विनिश्चयों की ओर आकृष्ट किया है —

1. 1998 आई एल एल जे 817, ऑल इण्डिया रेडियो बनाम संतोष कुमार व अन्य।
2. 1998 (78) एफ एल आर-143 (एस.सी.) जनरल मैनेजर टेलीकॉम बनाम एस. श्रीनिवासन राव व अन्य।

3. 1998 (76) एफ एल आर 240 कृषि उत्पादन मंडी समिति, गोरखपुर बनाम इन्डस्ट्रियल टिब्युनल, लखनऊ व अन्य।
4. 1998 (81) एफ एल आर 188, नीता कप्लिश बनाम पीठासीन अधिकारी श्रम न्यायालय व अन्य।
5. 1999 (6) एस एल आर 740 (इलाहाबाद उच्च न्यायालय) श्याम सुंदर मिश्रा बनाम लेबर कोर्ट, यू०पी०
6. 1998 III एल एल जे 1285 मैनेजमेंट ऑफ थान्जापुर टैक्सटाइल्स लि० बनाम पीठासीन अधिकारी व अन्य।

इसके प्रतिकार में विपक्षीगण के विद्वान प्रतिनिधि ने बहस की कि प्रार्थी श्री राधेश्याम को दिनांक 9.1.1980 को अतिरिक्त विभागीय डाक वाहक के रूप में नियुक्त किया गया था तथा दिनांक 20.07.1989 से अनाधिकृत अनुपस्थित हो गया तथा 113/-रु० स्टाम्प कम पाए जाने पर वह राशि प्रार्थी ने बाद में जमा करवायी जिसका अस्थायी गबन किया गया है इन दो आरोपों में जांच अधिकारी ने दोषी पाए जाने पर अनुशासनिक प्राधिकारी ने आदेश दिनांक 31.07.1991 को अतिरिक्त विभागीय डाक एजेन्ट (सेवा एवं आचरण) नियमावली 1964 के तहत सेवा से पृथक किया गया है तथा प्रार्थी का पद सिविल पोस्ट का होने से वह कर्मकार नहीं है तथा पोस्टल विभाग उद्योग की तारीफ में नहीं आने से न्यायाधिकरण को इस रेफरेंस का सुनवाई का क्षेत्राधिकार नहीं है।

अप्रार्थी के विद्वान प्रतिनिधि ने न्यायाधिकरण का ध्यान निम्न न्यायिक विनिश्चयों की ओर आकृष्ट किया है -

1. 1977 ए आई आर 1677 एस.सी.
2. सब डिवीजनल इन्स्पेक्टर ऑफ पोस्ट बनाम थियाम जोसेफ व अन्य ए आई आर 1996 एस.सी. 1271

मैंने उभय पक्ष के विद्वान प्रतिनिधिगण की बहस पर मनन किया व माननीय उच्चतम न्यायालय व माननीय उच्च न्यायालय के उपरोक्त न्यायिक विनिश्चयों का सम्मानपूर्वक परिशीलन किया।

पत्रावली के अवलोकन से यह तो निर्विवाद स्थिति है कि प्रार्थी श्री राधेश्याम शर्मा की नियुक्ति विपक्षी स्थापन में अतिरिक्त विभागीय डाक वाहन के पद पर दिनांक 9.1.1980 को हुई थी तथा प्रार्थी के विरुद्ध आरोप संख्या एक दिनांक 20.07.1989 से बिना पूर्व अनुमति के अनुपस्थित हो जाने व आरोप संख्या दो में दिनांक 18.07.1989 को स्टाम्प बॉक्स में 113/-रु० पाए जाने पर प्रार्थी द्वारा दिनांक 22.7.89 को 50/-रु० व दिनांक 31.07.89 को 63/-रु० इस प्रकार कुल 113/-रु० जमा करवाए गए जो अस्थायी गबन मानकर प्रार्थी के खिलाफ अतिरिक्त विभागीय डाक एजेन्ट सेवा व आचरण नियमावली 1964 के नियम 17 के अनुसार विभागीय जांच हुई जिसमें प्रार्थी को दोनों आरोपों में दोषी पाये जाने पर अनुशासनिक अधिकारी विपक्षी संख्या एक द्वारा आदेश दिनांक 31.07.1991 से प्रार्थी को सेवा से पृथक का आदेश जारी किया गया।

प्रार्थी के विरुद्ध इस घरेलू जांच को न्यायाधिकरण के मेरे से पूर्व पीठासीन अधिकारी द्वारा आदेश दिनांक 23.07.2015 से अशुद्ध एवं अनुचित घोषित किया गया है तथा विपक्षी विभाग ने इन आरोपों को प्रमाणित करने के लिए न्यायाधिकरण के समक्ष कोई नवीन साक्ष्य पेश नहीं की गई है इसलिए आरोप प्रमाणित किए जाने के लिए तो अभिलेख पर अप्रार्थीगण की कोई साक्ष्य न्यायाधिकरण के समक्ष नहीं आयी है तथा माननीय उच्चतम न्यायालय के न्यायिक विनिश्चय नीता कपलीश बनाम पी.ओ. श्रम न्यायालय व अन्य 1999 (81) एफ एल आर 188 में यह व्यवस्था दी हुई है कि जहां घरेलू जांच उचित नहीं पायी जाती है तो घरेलू जांच की साक्ष्य सामग्री समाप्त हो जाती है तथा प्रबंध को नवीन साक्ष्य प्रस्तुत करके अपने कृत्य को न्यायोचित ठहराना होता है यदि साक्ष्य पेश नहीं की जाती है तो प्रबंधन को उसके परिणाम भुगतने होते हैं। तथा माननीय इलाहाबाद उच्च न्यायालय ने न्यायिक विनिश्चय 1999(6) एस एल आर 740 व माननीय मद्रास उच्च न्यायालय के न्यायिक विनिश्चय 1998 III एल एल जे 1285 में यह व्यवस्था दी है कि जब घरेलू जांच त्रुटियुक्त व अनुचित घोषित हो जाती है तो घरेलू जांच में आयी साक्ष्य पर रिलाई नहीं किया जा सकता है तथा त्रुटियुक्त व अनुचित जांच कोई जांच नहीं के तुल्य मानी जावेगी।

इसलिए उपरोक्त न्यायिक विनिश्चयों की रोशनी में जब प्रार्थी के खिलाफ हुई घरेलू जांच अशुद्ध एवं अनुचित आदेश दिनांक 23.07.2015 से घोषित हो गई तथा अप्रार्थी स्थापन ने कोई नवीन साक्ष्य आरोप को प्रमाणित करने के लिए अभिलेख पर पेश नहीं की गई है तो प्रार्थी के खिलाफ उक्त आरोप प्रमाणित नहीं माने जा सकते हैं।

अप्रार्थीगण के विद्वान प्रतिनिधि का मुख्य तर्क यह रहा है कि प्रार्थी का पद एक्सट्रा डिपार्टमेंटल पोस्टल एजेन्ट का सिविल पद होने से न्यायाधिकरण को मामले का रेफरेंस सुनवाई का क्षेत्राधिकार नहीं है। इस तर्क के संबंध में अप्रार्थीगण के विद्वान प्रतिनिधि ने न्यायाधिकरण का ध्यान न्यायिक विनिश्चय 1977 ए आई आर एस.सी. 1677 की ओर आकृष्ट किया है इस न्यायिक विनिश्चय का सम्मानपूर्वक परिशीलन किया। इस न्यायिक विनिश्चय में माननीय उच्चतम न्यायालय ने यह व्यवस्था दी है कि अतिरिक्त शाखा डाकपाल या उपडाकपाल या वितरण एजेन्ट के पद सिविल पोस्ट है तथा पोस्टल प्राधिकारी व अतिरिक्त विभागीय डाक एजेन्ट के मध्य मालिक एवं नौकर का संबंध होने से संविधान के अनुच्छेद 311 (2) की पालना न किए जाने पर सेवा समाप्त या सेवा से हटाए जाना अवैधानिक होगा। इसलिए इस न्यायिक विनिश्चय में कोई औद्योगिक न्यायाधिकरण के क्षेत्राधिकार का प्रश्न अन्तर्गत न होने से यह न्यायिक विनिश्चय अप्रार्थीगण के विद्वान प्रतिनिधि को कोई मदद नहीं पहुंचाता है तथा अप्रार्थी के विद्वान प्रतिनिधि ने न्यायाधिकरण का ध्यान न्यायिक विनिश्चय सब-डिवीजनल इन्स्पेक्टर ऑफ पोस्ट बनाम थियाम जोसेफ व अन्य ए आई आर 1996 एस.सी. 1271 की ओर आकृष्ट किया है। इसके प्रतिकार में प्रार्थी के विद्वान प्रतिनिधि ने न्यायाधिकरण का ध्यान निम्न न्यायिक विनिश्चयों की ओर आकृष्ट किया है -

1. 1998 आई एल एल जे 817, ऑल इण्डिया रेडियो बनाम संतोष कुमार व अन्य।

2. 1998 (78) एफ एल आर-143 (एस.सी.) जनरल मैनेजर टेलीकॉम बनाम एस. श्रीनिवासन राव व अन्य।

इन न्यायिक विनिश्चयों का सम्मानपूर्वक परिशीलन किया। आल इण्डिया रेडियो व जनरल मैनेजर टेलीकॉम के न्यायिक विनिश्चयों की रोशनी में अप्रार्थीगण पोस्टल विभाग उद्योग की तारीफ में आना पाया जाता है इसलिए न्यायाधिकरण के क्षेत्राधिकार न हो तो ऐसा माने जाने का कोई यथोचित आधार हस्तगत मामले में नहीं पाया जाता है क्योंकि रेफरेंस केन्द्रीय सरकार से निर्दिष्ट होकर इस न्यायाधिकरण को न्याय निर्णयन हेतु प्राप्त हुआ है तथा रेफरेंस की वैधानिकता के प्रश्न की देखने की अधिकारिता इस न्यायाधिकरण में निहित हो ऐसी कोई विधिक प्रसंगति अप्रार्थीगण के विद्वान प्रतिनिधि ने न्यायाधिकरण के समक्ष स्पष्ट नहीं की है। ऐसी सूरत में अप्रार्थीगण के विद्वान प्रतिनिधि की इस दलील में कोई विधिक सार नजर नहीं आता है तथा उपरोक्त विवेचन के फलस्वरूप जब अप्रार्थीगण ने प्रार्थी के खिलाफ आरोपों को प्रमाणित करने के लिए कोई नवीन साक्ष्य पेश नहीं करने से एवं घरेलू जांच दूषित होने से प्रार्थी के विरुद्ध आरोप प्रमाणित नहीं पाए जाते हैं इसलिए प्रार्थी श्री राधेश्याम शर्मा को आदेश दिनांक 31.07.1991 से सेवा से पृथक किया जाना अवैध एवं अनुचित पाया जाता है तथा प्रार्थी पुनः अतिरिक्त विभागीय डाक वाहक के पद पर बहाल होने का हकदार है बशर्ते अधिवार्षिक आयु प्राप्त न की हो। प्रार्थी कोई लाभप्रद पद पर दिनांक 31.07.1991 से रहा हो या न रहा हो ऐसी कोई साक्ष्य अभिलेख पर न होने से प्रार्थी मामले के तथ्य एवं परिस्थिति में दिनांक 31.07.1991 से बैंक वेजेज के रूप में तीस प्रतिशत राशि बहाली तक पाने का हकदार है जो अधिनिर्णय की तिथि से 6 माह में अदायगी की जावे अन्यथा प्रार्थी 6 प्रतिशत दर से उक्त राशि पर अधिनिर्णय की तिथि से वसूलयाबी तक ब्याज पाने का मुश्तहक होगा। अतः इस रेफरेंस का उत्तर उपरोक्तानुसार दिया जाकर निम्न अधिनिर्णय पारित किया जाता है -

अधिनिर्णय

अतः “अप्रार्थी संख्या 01 अधीक्षक, डाक विभाग, जयपुर द्वारा प्रार्थी श्रमिक राधेश्याम शर्मा पुत्र श्री गोविंद नारायण शर्मा को आदेश दिनांक 31.07.1991 से सेवापृथक किया जाना उचित एवं वैध नहीं है तथा प्रार्थी पुनः अतिरिक्त विभागीय डाक वाहक के पद पर बहाल होने का हकदार है बशर्ते अधिवार्षिक आयु प्राप्त न की हो। प्रार्थी श्रमिक दिनांक 31.07.1991 से बैंक वेजेज के रूप में तीस प्रतिशत राशि बहाली तक पाने का हकदार है जो अधिनिर्णय की तिथि से 6 माह में अदायगी की जावे अन्यथा प्रार्थी 6 प्रतिशत दर से उक्त राशि पर अधिनिर्णय की तिथि से वसूलयाबी तक ब्याज पाने का मुश्तहक है।”

गिरीश कुमार शर्मा, न्यायाधीश

नई दिल्ली, 29 जून, 2017

का.आ. 1594.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार क्षेत्रीय अधिकारी प्रभारी, मेट्रोलॉजिकल/सैमोलॉजिकल वेधशाला, अजमेर एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय एवं केन्द्रीय औद्योगिक न्यायाधिकरण, अजमेर के पंचाट (केस सं. सीआईटीआर 01/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.10.2016 को प्राप्त हुआ था।

[सं. एल-42012/130/2013-आईआर (डोयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1594.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. C.I.T.R. 01/2013) of the Labour Court & Central Industrial Tribunal, Ajmer as shown in Annexure, in the industrial dispute between the employers in relation to the Regional Officer Incharge, Metrological/Semological Observatory, Ajmer and their workman, which was received by the Central Government on 14.10.2016.

[No. L-42012/130/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

अनुबंध

श्रम न्यायालय एवं औद्योगिक न्यायाधिकरण, अजमेर

पीठासीन अधिकारी—श्री एस.एन.टेलर, आर.एच.जे.एस

प्रकरण संख्या – सी.आई.टी.आर. 01/13

रेफरेंस संख्या— एल.1-42012/130/2013-आईआर(डीयू) दिनांक 25.7.2013

श्री हरदयाल पुत्र श्री बाबूलाल हरीजन निवासी तारागढ रोड, अजमेर (राज0)

—प्रार्थी

बनाम

रीजनल ऑफिस इंचार्ज, मैट्रोलॉजिकल/सीमोलॉजिकल ऑब्जर्वेटरी, अजमेर तारागढ रोड, अजमेर

—अप्रार्थी

उपस्थिति :

प्रार्थी की ओर से : श्री शोभित पंत, अधिवक्ता।

अप्रार्थी की ओर से : श्री वी.डी शर्मा, अधिवक्ता।

अवार्ड

दिनांक 29.9.2016

1. दि. 5.2.13 को इस अधिकरण के तहत प्रार्थी द्वारा विरुद्ध अप्रार्थी औद्योगिक विवाद अधिनियम 1947 के अंतर्गत स्टेटमेंट ऑफ क्लेम प्रस्तुत किया गया। अप्रार्थी को तलब किये जाने पर दि.20.3.13 को उसके द्वारा अपना लिखित कथन प्रस्तुत किया गया। प्रार्थना पत्र के लंबनकाल में दि.25.7.13 को भारत सरकार के श्रम विभाग की ओर से केंद्रीय सरकार आई टी कम लेबर कोर्ट, जयपुर को अपनी अधिसूचना क.एल-42012/130/2013-आईआर(डीयू) द्वारा निम्नलिखित विवाद अधिनिर्णय हेतु निर्देशित किया गया है:-

Whether the action of the management of Meteorological/Seismological Observator, Ajmer by terminating Shri Hardayal s/o Shri Babulal Harijan, Dainik Safai Karmchhari, w.e.f.1-03-2012 is legal and justified? To what relief the workman is entitled to ?

2. भारत सरकार के श्रम मंत्रालय द्वारा जारी आदेश दि.5.2.2014 क.एल-42012/25/2013-आई आर (डीयू) द्वारा उक्त विवाद इस न्यायालय को अंतरित किए जाने पर उक्त आदेशों की अनुपालना में दि.25.2.14 के पत्रांक सं.सीजीआईटी/जयपुर/2013-14/1114 के द्वारा केंद्रीय सरकार आई टी कम लेबर कोर्ट जयपुर ने अपने समक्ष दर्ज उक्त विवाद सं.39/2013 को इस न्यायालय को अंतरित किया। जिस पर अंतरित प्रकरण की पत्रावली को इस न्यायालय के उक्त प्रकरण सं.सीआईटीआर-1/2013 की पत्रावली में शामिल किया जाकर उक्त प्रकरण में विधि अनुसार कार्यवाही की गयी। यहां यह भी उल्लेखनीय है कि दि.30.9.13 को अप्रार्थी ने श्रम मंत्रालय भारत सरकार के आदेश दि.25.7.13 द्वारा सभी औद्योगिक विवाद के प्रकरण जो अप्रार्थी से संबंधित है को श्रम न्यायालय, जयपुर में अंतरित कर दिया जाना बताते हुए प्रकरण को केंद्रीय श्रम न्यायालय जयपुर में अंतरित किए जाने की प्रार्थना की गयी थी किंतु तत्पश्चात् उक्त विवाद उक्त आदेश दि.5.2.14 द्वारा श्रम मंत्रालय केंद्रीय सरकार द्वारा केंद्रीय सरकार औद्योगिक न्यायाधिकरण कम लेबर कोर्ट, जयपुर से इस अधिकरण/न्यायालय को अंतरित कर दिया गया है तथा तत्पश्चात् अप्रार्थी की ओर से उक्त लंबित प्रार्थना पत्र बाबत अंतरण प्रकरण पर कोई कार्यवाही आगे नहीं की गयी न ही हमारे समक्ष अंतिम बहस के दौरान कोई तर्क दिये गये ऐसे में अप्रार्थी का उक्त प्रार्थना पत्र दि.30.9.13 औचित्यहीन एवं सारहीन होने से खारिज किए जाने योग्य होने से खारिज किया जाता है।

3. अपने स्टेटमेंट ऑफ क्लेम में प्रार्थी हरदयाल द्वारा कथन किया गया है कि वह अप्रार्थी संस्थान में वर्ष 2004 से नियमित रूप से सफाई कर्मचारी की हैसियत से कार्यरत रहा यद्यपि प्रार्थी को अंशकालीन कार्य करने के लिए नियुक्त किया गया था लेकिन उससे पूरे संस्थान में सेवा अवधि तक चतुर्थ श्रेणी का भी काम लेते थे। उसे दि.1.3.12 को मौखिक बिना कारण सेवा से पृथक कर दिया गया सेवा से पृथक किए जाते समय उसका वेतन सोलह सौ रुपये माहवार था। प्रार्थी को कभी भी समय पर वेतन नहीं दिया जाता था। अंत में कथन किया है कि इस न्यायालय को सुनवाई का क्षेत्राधिकार है, उसकी सेवामुक्ति से पूर्व आई डी एक्ट के नियमों की पालना नहीं की इसलिए वह सेवामुक्ति की दिनांक 1.3.12 से पिछले समस्त वेतन सहित बहाली किए जाते हुए उसकी सेवामुक्ति को अवैध, अनुचित घोषित करने का अवार्ड पारित किया जावे।

4. जवाब स्टेटमेंट ऑफ क्लेम में अप्रार्थी द्वारा कथन किया गया है कि प्रार्थी अंशकालिक, पार्ट-टाईम आकस्मिक काम कर रहा था, ऐसे काम के लिए व्यक्ति किराये पर लेते हैं। उसने जितने घंटे काम किया उसकी स्थानीय दैनिक मजदूरी दे दी है। प्रार्थी किसी पद पर कार्य नहीं कर रहा था। कार्य करने की अवधि के हिसाब से उसे भुगतान कर दिया गया। अब कोई बकाया नहीं है। काम उपलब्ध नहीं होने से नोटिस या मुआवजे का आधार नहीं है। अंत में प्रार्थी का दावा अस्वीकार करने एवं प्रार्थी को कोई अनुतोष पारित नहीं करने की प्रार्थना की है।

5. प्रार्थी द्वारा अपनी साक्ष्य में स्वयं प्रार्थी हरदयाल परीक्षित हुआ है जबकि अप्रार्थी की ओर से अप्रार्थी साक्षी बी एल मीणा एवं अप्रार्थी साक्षी अमरसिंह राठौड़ परीक्षित हुए हैं। अप्रार्थी की ओर से प्रदर्श एम-1रसीद/ प्रार्थना पत्र, प्रदर्श एम-2 थानाधिकारी का प्रार्थना पत्र, प्रदर्श एम-3 बिल प्रदर्श एम-4, अस्थाई सफाई कर्मचारी की उपस्थिति का पत्र प्रस्तुत कर प्रदर्शित करवाये गये हैं।

6. बहस अंतिम सुनी गयी। विद्वान अधिवक्ता अप्रार्थी द्वारा अपने मौखिक तर्कों के अलावा लिखित में भी तर्क प्रस्तुत किये गये हैं।

7. विद्वान अधिवक्ता प्रार्थी के स्टेटमेंट ऑफ क्लेम के तथ्यों के दोहराव के साथ तर्क रहे हैं कि प्रार्थी अप्रार्थी के अधीन संस्थान में 2004 से सफाई कर्मचारी की हैसियत से कार्यरत रहा। उसे दि.1.3.12 को बिना उचित कारण के सेवा से पृथक कर दिया गया। उसको मासिक वेतन सोलह सौ रुपये दिया जाता था। प्रार्थी की उक्त सेवामुक्ति औद्योगिक विवाद 1947 के प्रावधानों के विरुद्ध है। प्रार्थी को अंशकालिक रूप से नियुक्त किया जाना स्वयं अप्रार्थी का स्वीकृत तथ्य है जिसके द्वारा वर्ष 2004 से दि.1.3.12 तक के सेवाकाल को अप्रार्थी की ओर से इंकार नहीं किया गया है। केवल अंशकालिक आकस्मिक मजदूर बताया गया है। अप्रार्थी द्वारा न्यायालय के आदेश के

बावजूद प्रार्थी के उपस्थिति रजिस्टर इत्यादि प्रस्तुत नहीं किये गये हैं एवं झूठा शपथ पत्र प्रस्तुत किया गया है। प्रकरण में जो विवाद रेफरेंस किया गया है उसमें 240 दिन प्रतिवर्ष प्रार्थी के कार्य करने के संबंध में कोई विवाद नहीं है केवल यही विवाद निर्देशित किया गया है कि क्या प्रार्थी को दि.1.3.12 से अप्रार्थी द्वारा सेवा से पृथक् किया जाना वैध व न्यायोचित है। न्यायालय इस विवाद के बाहर नहीं जा सकता व प्रार्थी के 240 दिन प्रतिवर्ष कार्य करने के बारे में अनावश्यक अभिमत नहीं दे सकता है। वैसे भी पत्रावली पर उपस्थित समस्त साक्ष्य-सामग्री से प्रार्थी का उक्त कालावधि में सफाई कर्मी के तौर पर अप्रार्थी के यहां नियमित कार्य किया जाना साबित होता है। डेली वेजर सफाई कामदार श्रमिक की श्रेणी में आता है यदि वह पार्टटाईम है तो भी उसे सेवा से मुक्त करना न्यायोचित नहीं है। अप्रार्थी का उक्त कृत्य अवैध व अन्यायपूर्ण है। अप्रार्थी द्वारा न्यायालय द्वारा आदेशित दस्तावेज प्रस्तुत नहीं किये जाने के कारण अप्रार्थी के खिलाफ उपधारणा बनती है। यदि वह दस्तावेज पेश करता तो निश्चित रूप से प्रार्थी के 240 दिन से अधिक समय प्रतिवर्ष अप्रार्थी के यहां काम करना प्रकट होता उनके द्वारा अपने तर्कों के समर्थन में निम्नलिखित न्यायिक दृष्टांत भी पेश किये गये हैं:-1989 (2) आर एल डबल्यू पेज 336 सन्नी बनाम म्युनिसिपल बोर्ड सिरौही, 2000 (1) एल एल एन पेज 693 उमेश चंद्र झा बनाम स्टेट ऑफ बिहार व अन्य, 2000 एल एल आर (राज) 445 स्टेट बनाम लाला व अन्य, 2001 एल एल आर (झार) 823 मैटरोलॉजिकल एंड एंजीरियरिंग कंसल्टेंट्स (इंडिया) लि0 बनाम स्टेट ऑफ बिहार, 2010 एल एल आर (एस सी) 494 एल आई सी ऑफ इंडिया बनाम रामपालसिंह बिसेन, 2015 एल एल आर (एस सी) 449 उमरेला ग्राम पंचायत बनाम सैक्रेट्री म्युनिसिपल एंप्लॉयीज यूनियन व अन्य, 2014 एल एल आर (कल) 642 इंस्टीट्यूट फॉर स्टील डवलपमेंट एंड ग्रॉथ व अन्य बनाम स्टेट ऑफ वेस्ट बंगाल व अन्य, 2013 एल एल आर (पी एंड एच) 1056 सोहनलाल वर्कमैन बनाम एडीशनल डिस्ट्रिक्ट एंड सैशंस जज व अन्य, 2016 एल एल आर (पी एंड एच) 537 डी ए वी कॉलेज बनाम प्रोसाइडिंग ऑफिसर व अन्य। अंत में उनके द्वारा प्रार्थी के स्टेटमेंट ऑफ क्लेम में वर्णित अनुतोष जारी किये जाते हुए उक्त रेफरेंस का उत्तर प्रार्थी के पक्ष में दिये जाने की प्रार्थना की गयी है।

8. विद्वान अधिवक्ता अप्रार्थी द्वारा अपनी मौखिक व लिखित तर्कों में प्रार्थी का आवश्यकता के आधार पर अंशकालिक श्रमिक होना व 240 दिन से अधिक कार्य प्रतिवर्ष नहीं किया जाना तथा प्रतिवर्ष 240 दिन से अधिक समय कार्य किये जाने के तथ्य को साबित करने का भार प्रार्थी पर होना तथा प्रार्थी द्वारा इस संबंध में कोई दस्तावेजात प्रस्तुत नहीं किया जाना जिस कारण प्रार्थी को अप्रार्थी का श्रमिक नहीं माना जाना व प्रार्थी का शपथ पत्र एवं स्टेटमेंट ऑफ क्लेम स्वीकार योग्य नहीं होना बताया गया है एवं यह भी तर्क दिये गये हैं कि प्रार्थी माह सितंबर 2011 में प्रदर्श एम 4 अनुसार पुलिस थाना रामगंज अजमेर में कार्यरत था जो कि वही अवधि है जो कि प्रार्थी द्वारा अपने क्लेम में बतायी गयी है। जब प्रार्थी उक्त थाने में कार्यरत था तो प्रार्थी का अप्रार्थी के यहां उसी अवधि में कार्य किया जाना किसी भी प्रकार से माने जाने योग्य नहीं है। थाने में कार्य करने के संबंध में प्रार्थी की कोई खंडनीय साक्ष्य नहीं है तथा अप्रार्थी की साक्ष्य पूर्णतः विश्वसनीय है उनके द्वारा यह भी तर्क दिये गये हैं कि प्रार्थी सही तथ्य छिपाने एवं असत्य तथ्य तथ्य वर्णित करने का भी दोषी है इस कारण प्रार्थी कोई भी अनुतोष पाने का अधिकारी नहीं है। साक्ष्य अधिनियम के कठोर प्रावधान प्रकरण पर लागू नहीं होते हैं। उनके द्वारा अपने लिखित तर्कों में निम्नलिखित न्यायिक दृष्टांत भी अंकित किये गये हैं:-2003 (3) एस सी सी 25 रेंज फॉरेस्ट ऑफिसर बनाम एस टी हल्दीमानी, 2001 (9) एससीसी 713, 2002 (8) एससीसी 400, 2004 (8) एससीसी 161, 2005 (5) एससीसी 100, 2007 (3) आर एल डबल्यू पेज 1999 (राज), 2007 (6) एससीसी 120 अरुणिमा भरुच बनाम यू ओ आई, 2007 (8) एससीसी 449 प्रेस्टीज लाइट बनाम एस बी आई, 2001 (5) एससीसी 443 के एसआर एस टी सी बनाम लक्ष्मी देवम्मा, 2006 (4) एससीसी 1 स्टेट ऑफ कर्नाटक बनाम उमादेवी।

9. उभयपक्षकारान् के तर्कों के मददे नजर उनके द्वारा प्रस्तुत एवं अंकित न्यायिक दृष्टांतों के अभिमत एवं संबंधित विधि को विचार में लेते हुए पत्रावली का आद्योपांत गंभीरतापूर्वक परिशीलन किया गया।

10. विद्वान अधिवक्ता प्रार्थी के यह तर्क सही है कि उक्त रेफरेंस में न्यायालय के समक्ष निम्नलिखित विवाद ही निर्देशित है:- Whether the action of the management of Meteorological/Seismological Observator, Ajmer by terminating Shri Hardayal s/o Shri Babulal Harijan, Dainik Safai Karmchhari, w.e.f.1-03-2012 is legal and justified? To what relief the workman is entitled to?

11. विद्वान अधिवक्ता अप्रार्थी के न्यायिक दृष्टांत 2002 (3) एस सी सी 2 रेंज फॉरेस्ट ऑफिसर बनाम एस टी हल्दीमानी 2001 (9) एससीसी 713, 2002 (9) एस सी सी 400, 2004 (8) एस सी सी 161, 2005 (5) एससीसी 100, आर एल डबल्यू 2007 (3) पेज 1999 राज0 के हवाले से दिये गये यह तर्क सही है कि श्रमिक का 240 दिवस प्रतिवर्ष कार्य किये जाने की सिद्धि का भार श्रमिक पर ही होता है किंतु प्रार्थी की ओर से दिए गए यह तर्क सही है कि हस्तगत प्रकरण में जो उक्त विवाद निर्देशित किया गया है उसमें यह विवाद निर्देशित नहीं किया गया है कि क्या प्रार्थी अप्रार्थी का श्रमिक है या नहीं। प्रार्थी की ओर से प्रस्तुत न्यायिक दृष्टांत 2000 एल एल (राज) 445 स्टेट बनाम लाला व अन्य में माननीय राजस्थान उच्च न्यायालय द्वारा अधिनिर्णय का निर्देश के अनुबंधों से अधिक नहीं हो सकना अभिनिर्धारित किए जाते हुए यह अभिमत दिया गया है कि कर्मकार के स्थाई या अर्द्ध स्थाई होने के प्रश्न पर निर्देश नहीं किया गया। अतएव कर्मकार को स्थाई या अर्द्धस्थायी घोषित करने का अधिनिर्णय अवैध है। उक्त न्यायिक दृष्टांत के प्रकरण का निर्देश हस्तगत प्रकरण के निर्देश के समान ही था। इस कारण उक्त न्यायिक दृष्टांत हस्तगत प्रकरण पर पूरी तरह से लागू होता है तथा उक्त आधार पर प्रार्थी के यह तर्क माने जाने योग्य हो जाते हैं कि यह न्यायालय उक्त निर्देश के अनुबंधों से बाहर निकलकर के श्रमिक के स्टेटस के बारे में अभिमत नहीं दे सकता है। जैसा कि हमने पूर्व में विवेचन दिया है हस्तगत प्रकरण में हमारे समक्ष उक्त निर्देशानुसार यही विवादित है कि क्या प्रार्थी की अप्रार्थी द्वारा किया गया सेवा से पृथक्करण वैध व न्यायोचित है?

12. उक्त संबंध में यह भी है कि प्रार्थी द्वारा वर्ष 2004 से दि.1.3.12 तक अप्रार्थी के यहां नियमित कार्य किया जाना अपने अभिवचनों में रखा गया था जिसकी अप्रार्थी की ओर से अपने अभिवचनों में प्रार्थी की सेवा की निरंतरता के बारे में स्पष्ट तौर पर इंकारी नहीं है। केवल

प्रार्थी को अंशकालिक आकस्मिक मजदूर बताया गया है। प्रार्थी ने कितने काल में कब कब काम किया यह उनकी तरफ से विशिष्ट कथन के रूप में या अपने अभिवचनों में नहीं है। इस अधिकरण द्वारा दि.6.6.13 को अप्रार्थी को प्रार्थी द्वारा प्रस्तुत प्रार्थना पत्र दि.30.4.13 में वर्णित दस्तावेज जनवरी 2004 से 1.3.12 तक की अवधि का अस्थाई/अंशकालीन कर्मचारीगण का हाजरी रजिस्टर व जनवरी 2004 से दि. 1.3.12 तक की अवधि में प्रार्थी को भुगतान की गयी वेतन राशि का विवरण रजिस्टर व रिकार्ड प्रस्तुत किये जाने के आदेश दिये गये थे किंतु अप्रार्थी की ओर से दि. 24.7.13 में श्री शिवशंकरसिंह द्वारा एक शपथ पत्र प्रस्तुत कर एक तरफ कार्यालय में उक्त दस्तावेज उपलब्ध नहीं होना व दूसरी तरफ प्रार्थी का अस्थाई/पार्टटाईम श्रमिक होना, कंटीनजेंट एक्सपेंडिचर स्टेटमेंट अप्रैल 2012 से पूर्व वालों में वर्णित होना भी दर्ज किया गया है। कंटीनजेंट एक्सपेंडिचर स्टेटमेंट भी अप्रार्थी द्वारा पत्रावली में प्रस्तुत नहीं किये गये हैं। जब अप्रार्थी के पास प्रार्थी के उपस्थिति से संबंधित दस्तावेज ही नहीं है तो प्रार्थी यह किस आधार पर बता रहा है कि प्रार्थी ने निरंतर कार्य नहीं किया? निरंतर कार्य के संबंध में प्रार्थी साक्षी हरदयाल की स्थिर साक्ष्य है। ऐसे में भी अप्रार्थी की ओर से प्रार्थी के 240 दिवस से अधिक समय प्रतिवर्ष कार्यरत नहीं रहने के तर्क आधारहीन हो जाते हैं।

13. यहां यह भी उल्लेखनीय है कि अप्रार्थी द्वारा प्रस्तुत जवाब स्टेटमेंट ऑफ क्लेम में कहीं भी यह तथ्य स्पष्ट तौर पर वर्णित नहीं किया गया है कि प्रार्थी ने किसी वर्ष में 240 से कम दिवस काम किया है। ऐसे में भी अप्रार्थी को उक्त तर्कों के आधार पर कोई फायदा नहीं दिया जा सकता है। प्रार्थी द्वारा प्रस्तुत न्यायिक दृष्टांत 2001 एल एल आर (झारखंड) 823 मैटालॉजिकल एंड इंजीनियरिंग कंसल्टेंट्स इंडिया लि० बनाम दी स्टेट ऑफ बिहार व अन्य में माननीय झारखंड उच्च न्यायालय द्वारा यदि पक्षकार द्वारा कोई विशिष्ट आधार नहीं लिया गया है तो उसके बारे में निर्णयकर्ता प्राधिकारी को अभिमत नहीं दिया जा सकना अभिनिर्धारित किया गया है जो भी अभिमत अप्रार्थी पक्ष के उक्त तर्कों को अस्वीकार योग्य मानने वाला बना देते हैं।

14. अप्रार्थी की ओर से प्रार्थी का पुलिस थाना रामगंज में सफाई का कार्य किये जाने का व वहां सफाईकर्मी होने से उसे अप्रार्थी का सफाईकर्मी माने जाने योग्य नहीं होने का भी तर्क दिया गया है। उनके यह भी तर्क रहे हैं कि प्रार्थी द्वारा उक्त तथ्य छिपाये गये हैं। इस संबंध में उनके द्वारा प्रदर्शित-1,2,3,4 प्रस्तुत किये गये हैं जिनसे यह प्रकट होता है कि माह सितंबर 2011 में प्रार्थी ने पुलिस थाना रामगंज अजमेर में तीन सौ रुपये मासिक वेतन पर सफाई की है। इसमें कोई संदेह नहीं है कि अप्रार्थी द्वारा प्रस्तुत उक्त दस्तावेजों में प्रार्थी का नाम दर्ज है तथा थाना रामगंज में प्रार्थी द्वारा सफाई किया जाना भी दर्ज है किंतु इस संबंध में विद्वान अधिवक्ता प्रार्थी के भी यह तर्क माने जाने योग्य है कि अप्रार्थी द्वारा अपने अभिवचनों में ऐसे कोई तथ्य दर्ज नहीं किये गये हैं। अप्रार्थी के द्वारा उक्त तथ्य प्रार्थना पत्र बाबत रिकार्ड पर लिये जाने दस्तावेज दि.17.12.14 के साथ प्रस्तुत किये गये थे जिसके संबंध में अप्रार्थी साक्षी अमरसिंह राठौड़ की साक्ष्य मुख्य परीक्षा के शपथ पत्र में है कि प्रार्थी जिस अवधि में अजमेर मौसम विभाग में कार्य करता था व जिस अवधि का भुगतान मौसम विभाग ने किया था उसी अवधि में प्रार्थी ने रामगंज थाना अजमेर से भी भुगतान प्राप्त किया था। इस प्रकार मुख्य परीक्षा के शपथ पत्र में उक्त अप्रार्थी साक्षी अमरसिंह राठौड़ प्रार्थी का अप्रार्थी के यहां काम करना नहीं इंकारता है बल्कि साथ-साथ प्रार्थी द्वारा थाना रामगंज अजमेर से भी भुगतान प्राप्त करने की ही कहता है। जिरह में उक्त साक्षी को उक्त दस्तावेज फर्जी होने के संबंध में प्रार्थी की ओर से सुझाव दिया गया है। जिस तथ्य को उक्त साक्षी ने इंकार किया है। विद्वान अधिवक्ता प्रार्थी के उक्त संबंध में न्यायिक दृष्टांत 2010 एल एल आर (एस सी) 494 एल आई सी ऑफ इंडिया एवं अन्य बनाम रामपालसिंह बिसेन के आधार पर यह तर्क रहे हैं कि केवल उक्त दस्तावेज अप्रार्थी द्वारा प्रदर्शित करवा दिये जाने के आधार पर ही साबित नहीं माने जा सकते हैं। उक्त न्यायिक दृष्टांत में माननीय सर्वोच्च न्यायालय द्वारा दस्तावेज को प्रदर्शित किये जाने मात्र ही दस्तावेज साबित नहीं हो जाने का अभिमत दिया गया है। यद्यपि न्यायिक दृष्टांत 2001 (5) एस सी सी 443 के एस आर टी सी बनाम लक्ष्मी देवम्मा के हवाले से अप्रार्थी की ओर से दिया गया यह तर्क माने जाने योग्य है कि हस्तगत प्रकरण में साक्ष्य के नियम कठोरता से लागू नहीं होते हैं फिर भी इसकी अनदेखी नहीं की जा सकती है कि यदि अप्रार्थी उक्त दस्तावेज से संबंधित थानाधिकारी को साक्ष्य में पेश करता तो प्रार्थी को जिरह का अवसर प्राप्त होता उक्त समस्त के मद्देनजर भी प्रार्थी की ओर से दिया गया उक्त तर्क स्वीकार योग्य है कि अप्रार्थी की ओर से उक्त दस्तावेज प्रदर्शित करवा दिये जाने मात्र से ही उन्हें साबित नहीं माना जा सकता है और फिर उक्त दस्तावेजों की कोई नीव अप्रार्थी के अभिवचनों में भी नहीं है। अप्रार्थी की ओर से तर्क दिये गये हैं कि उक्त दस्तावेजों का ज्ञान लिखित कथन पेश करने के समय नहीं था व बाद में हुआ है किंतु प्रार्थी उक्त दस्तावेजों का ज्ञान होने पर अपने अभिवचनों में संशोधन चाह सकता था। यदि अप्रार्थी अपने अभिवचनों में उक्त दस्तावेजात् के बारे में कथन अभिवचनों में संशोधन के माध्यम से दर्ज कराता तो निश्चित रूप से प्रार्थी को उसके जवाब का अवसर मिलता। फलस्वरूप उक्त दस्तावेजात् के आधार पर अप्रार्थी को कोई फायदा नहीं दिया जा सकता है। जहां तक अप्रार्थी की ओर से न्यायिक दृष्टांत 2007 (6) एससीसी 120 अनमा बनाम यू ओ आई एवं 2007 (8) एस सी सी 449 प्रेस्टीज लाईट बनाम एस बी आई के हवाले से प्रार्थी पर सही तथ्य छिपाने व मिथ्या तथ्य रखने के आरोप का एवं इस आधार पर प्रार्थी के अनुतोष प्राप्ति का अधिकारी नहीं होने के तर्क का प्रश्न है ऐसा भी स्पष्ट तौर पर अप्रार्थी के अभिवचनों में कोई आधारभूत तथ्य दर्ज नहीं है कि प्रार्थी ने क्या तथ्य छुपाए हैं और फिर जो तथ्य अप्रार्थी की ओर से थाना रामगंज में प्रार्थी के सफाई करने के संबंध में उक्त प्रकार उठाये गये हैं, के आधार पर बिना अभिवचनों के एवं उक्त विवेचनानुसार अप्रार्थी को कोई लाभ नहीं दिया जा सकता है।

15. प्रार्थी द्वारा अप्रार्थी के यहां वर्ष 2004 से दि.1.3.12 तक सफाई का कार्य किया गया। उक्त विवेचनानुसार इस तथ्य पर कोई संदेह नहीं रह जाता है। प्रार्थी की ओर से न्यायिक दृष्टांत 2015 एल एल आर 449 उमरेला ग्राम पंचायत बनाम दी सेक्रेट्री म्युनिसिपल एंप्लॉइज, यूनियन व अन्य में माननीय सर्वोच्च न्यायालय द्वारा पांच वर्ष उपरांत दैनिक वेतन भोगी की सेवाओं को स्थाई कर्मचारियों के समान समझा जाना अभिनिर्धारित किया गया है यदि वे स्थाई कर्मचारियों के अनुरूप व स्थाई कर्मचारियों के समान कार्य घंटों पर कार्य करते हैं। प्रार्थी की ओर से प्रस्तुत न्यायिक दृष्टांत 2014 एल एल आर 642 इंस्टीट्यूट फार स्टील डेवलेपमेंट एंड ग्रॉथ व अन्य बनाम दी स्टेट ऑफ वेस्ट बंगाल व अन्य में माननीय कलकत्ता उच्च न्यायालय द्वारा पार्टटाईम स्वीपर को औद्योगिक विवाद अधिनियम की धारा 2

एस अनुसार श्रमिक होना अभिनिर्धारित किया गया है तथा न्यायिक दृष्टांत 2013 एल एल आर 1056 सोहनलाल वर्कमैन बनाम एडी. डिस्ट्रिक्ट एंड सैशंस जज व अन्य में माननीय पंजाब व हरियाणा उच्च न्यायालय द्वारा पार्टटाईम श्रमिकों को औद्योगिक विवाद अधिनियम की धारा 25 एफ का संरक्षण प्राप्त होने का अभिमत दिया गया है। उनके द्वारा प्रस्तुत न्यायिक दृष्टांत 2016 एल एल आर 537 डी ए वी कॉलेज बनाम पी ओ व अन्य में माननीय पंजाब व हरियाणा उच्च न्यायालय द्वारा पार्टटाईम सिक्युरिटी गार्ड को सेवा से पृथक बिना औद्योगिक विवाद अधिनियम के बाध्यकारी प्रावधानों की पालना के किया जाना अवैध माना गया है। हस्तगत प्रकरण में प्रार्थी को सेवा से पृथक किये जाते समय अप्रार्थी द्वारा न तो कोई नोटिस दिया गया है न ही कोई रिट्रैचमेंट कंपेंसेशन दिया गया है। निश्चित रूप से प्रार्थी का सेवा से पृथक्करण औद्योगिक विवाद अधिनियम की धारा 25 एफ के विरुद्ध है एवं अवैध है। यह न्यायोचित भी नहीं माना जा सकता है क्योंकि प्रार्थी एक लंबे समय तक अप्रार्थी के यहां सफाई कर्मचारी के तौर पर कार्य कर चुका है। प्रार्थी का लंबा समय तक कार्य किया जाना स्वयं अप्रार्थी के अभिवचनों व साक्ष्य से दृष्टिगत होता है। प्रार्थी के मामले को विफल कर देने के आशय से अप्रार्थी द्वारा प्रार्थी को कभी अंशकालिक श्रमिक तो कभी ठेके पर भिन्न भिन्न प्रकार से अपने अभिवचनों व साक्ष्य में बताया गया है इससे भी अप्रार्थी के मामले की पोल खुलती है व वह प्रार्थी के मामले से येन केन प्रकारेण बचना चाहता है। अप्रार्थी की ओर से अपने यहां सफाई कर्मों का कोई पद नहीं होना अपने अभिवचनों में रखा गया है। प्रार्थी की ओर से उक्त तथ्य का कोई खंडन नहीं है। प्रार्थी यह नहीं बता पाया है कि अप्रार्थी के यहां सफाई कर्मों का कोई नियमित पद हो। प्रार्थी द्वारा न्यायिक दृष्टांत 2013 एल एल आर 1056 सोहनलाल वर्कमैन बनाम ए डी जे व अन्य में तीन वर्ष की सेवाओं के आधार पर पार्टटाईम श्रमिक का सेवा से पृथक किया जाना धारा 25 एफ औद्योगिक विवाद अधिनियम 1947 के उल्लंघन में पाकर प्रार्थी को सेवा में पुनर्स्थापित करने के बदले एक लाख रुपये की क्षतिपूर्ति दिलायी गयी है। जिस अभिमत व उक्त विवेचन के मददे नजर प्रार्थी को अप्रार्थी के यहां पुनर्स्थापित किये जाने का आदेश दिया जाना तो न्यायोचित प्रतीत नहीं होता है किंतु उक्त प्रकार पुनर्स्थापना के स्थान पर एक लाख रुपये क्षतिपूर्ति अप्रार्थी द्वारा प्रार्थी को देय होने का आदेश दिया जाना साम्यपूर्ण एवं न्यायोचित प्रतीत होता है। ऐसी परिस्थिति में उक्त रेफरेंस का उत्तर तदनुसार ही दिया जाना न्यायोचित है।

आदेश

16. एतद्वारा श्रम मंत्रालय, भारत सरकार द्वारा निर्देशित उक्त विवाद का उत्तर इस प्रकार से दिया जाता है कि अप्रार्थी मैनेजमेंट, मेट्रोपॉलिटन/सेस्मोलॉजिकल आर्बिटर, अजमेर द्वारा श्री हरदयाल पुत्र बाबूलाल, हरिजन, दैनिक सफाई कर्मचारी को दि.1.3.2012 से सेवा से पृथक किए जाने का कृत्य उपरोक्तानुसार अनुचित एवं अवैध है। अतः प्रार्थी श्रमिक श्री हरदयाल अप्रार्थी से बतौर क्षतिपूर्ति एक लाख रुपये पाने का अधिकारी है। अप्रार्थी प्रार्थी को उक्त रकम का भुगतान अवार्ड प्रकाशन की दिनांक से तीन माह में कर देवे अन्यथा प्रार्थी उक्त दिनांक से तावसूली तक बारह प्रतिशत साधारण ब्याज भी मूल रकम पर पाने का अधिकारी होगा।

एस. एन. टेलर, न्यायाधीश

नई दिल्ली, 29 जून, 2017

का.आ. 1595.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में कन्द्रीय सरकार सहायक भविष्य निधि आयुक्त (प्रशासन), भविष्य निधि आयुक्त कार्यालय, जयपुर एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर के पंचाट (केस सं. सीआईटी 53/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.06.2017 को प्राप्त हुआ था।

[सं. एल-42012/162/95-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1595.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. C.I.T. 53/1996) of the Central Industrial Tribunal, Jaipur as shown in Annexure, in the industrial dispute between the employers in relation to the Assistant Provident Fund Commissioner (Administration), Provident Fund Commissioner Office, Jaipur and their workman, which was received by the Central Government on 12.06.2017.

[No. L-42012/162/95-IR (DU)]

RAJENDRA JOSHI, Dy. Director

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 53/1996

सी.आई.एस. नं. 57/2014

रेफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक
एल-42012/162/95- आई.आर.(डी.यू.-) दिनांक 31.10.1996

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चांदपोल बाजार, जयपुर

— प्रार्थी

बनाम

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ज्योति नगर, जयपुर

— अप्रार्थी

पीठासीन अधिकारी: गिरीश कुमार शर्मा, आर.एच.जे.एस.

उपस्थित :

प्रार्थी की ओर से विद्वान प्रतिनिधि श्री बी0एम0 बागड़ा।

अप्रार्थी की ओर से विद्वान प्रतिनिधि श्री विमल कुमार जैन।

दिनांक 26.04.2017.

अधिनिर्णय

भारत सरकार की उपरोक्त अधिसूचना से निम्न अनुसूची का विवाद अधिनिर्णय हेतु इस अधिकरण को प्राप्त हुआ है।

“Whether the action of the Assistant Provident Fund Commissioner (Adm.) jaipur is justified the terminating the services of Shri Lallu Lal Meena? If not, what relief he is entitled to?”

प्रार्थी श्रमिक लल्लूलाल मीणा की ओर से प्रार्थी प्रतिनिधि श्री बी0एम0 बागड़ा ने दिनांक 11.8.1997 को स्टेटमेंट ऑफ क्लेम पेश कर अभिकथन किया कि विपक्षी संस्थान में चपरासी के स्थाई पद पर प्रार्थी श्रमिक का नाम नियोजन कार्यालय से प्राप्त होने पर साक्षात्कार द्वारा चयन किया था। प्रार्थी श्रमिक ने दिनांक 9.8.1994 से चतुर्थ श्रेणी कर्मचारी के पद पर काम करना आरम्भ किया था तथा विपक्षी संस्थान ने दिनांक 30.11.94 को कोई कारण बताये बिना प्रार्थी श्रमिक को सेवा से अलग कर दिया। प्रार्थी श्रमिक को नियमित पद पर काम करने के बावजूद भी 22/-रु0 प्रतिदिन की दर से वेतन दिया गया। प्रार्थी श्रमिक को सेवा से हटाने के बाद विपक्षी संस्थान द्वारा बाद में श्री हीरालाल महावत व श्री मदनलाल रैगर को काम पर रखा था जबकि प्रार्थी श्रमिक को दुबारा काम पर नहीं बुलाया गया, प्रार्थी की वरीयता सूची प्रकाशित नहीं की गयी, जो विधिसंगत नहीं है। अतः अन्त में प्रार्थी श्रमिक को दिनांक 30.11.94 से बहाल कर नियमित सेवा मानते हुये नियमित वेतन श्रृंखला एवं अन्य परिलाभ दिलाये जाने की प्रार्थना की है।

विपक्षी संस्थान ने क्लेम के कथनों का विरोध करते हुए जवाब प्रस्तुत कर अभिकथन किया है कि प्रार्थी को दैनिक वेतनभोगी मजदूर कर्मचारी के रूप में 22/-रु0 प्रतिदिन के हिसाब से संक्षिप्त अवधि के लिए पानी वाले के रूप में काम पर रखा था। विपक्षी संस्थान द्वारा नियोजन कार्यालय से स्थाई नौकरी के लिए कोई नाम नहीं मांगा गया। प्रार्थी श्रमिक को गर्मी के मौसम में दैनिक वेतन पर 9.8.94 से 30.11.94 तक काम पर रखा था। प्रार्थी श्रमिक द्वारा माह जुलाई—1994 में 18 दिन, माह अगस्त—94 में 19 दिन, सितम्बर—94 में 19 दिन, अक्टूबर—94 में 13 दिन, नवम्बर—94 में 17 दिन इस प्रकार कुल 86 दिन कार्य किया था। गर्मी का मौसम खत्म होने पर प्रार्थी श्रमिक की आवश्यकता नहीं होने पर उसे हटा दिया गया था। आगामी सत्र में भी अल्पावधि के लिए आवश्यकता होने पर नियोजन कार्यालय से प्रेषित नामों में से श्री हीरालाल व श्री मदनलाल को दैनिक वेतन पर रखा था। प्रार्थी श्रमिक को कभी भी स्थाई पद पर नियमित नियुक्ति नहीं दी गई। अतः प्रार्थी श्रमिक द्वारा प्रस्तुत स्टेटमेंट ऑफ क्लेम खारिज किए जाने की प्रार्थना की है।

प्रार्थी की ओर से साक्ष्य में प्रार्थी साक्षी स्वयं लल्लू लाल मीणा परीक्षित हुआ है जबकि विपक्षी की ओर से साक्ष्य में विपक्षी साक्षी श्री भगवत सिंह परीक्षित हुआ है तथा दस्तावेजी शहादत में प्रदर्श आर—1 से प्रदर्श आर—7 प्रदर्शांकित करवाए गए हैं।

मैंने उभय पक्ष के विद्वान प्रतिनिधिगण की बहस सुनी गई। पत्रावली का अवलोकन किया गया।

अब न्यायाधिकरण के समख अवधारणीय बिन्दु यह है कि क्या विपक्षी विभाग में प्रार्थी श्रमिक श्री लल्लूलाल नियमित कर्मचारी नहीं था और क्या उसका सेवापर्यावसन विधिसम्मत था?

इस संबंध में सर्वप्रथम प्रार्थी श्रमिक के विद्वान प्रतिनिधि ने बहस की कि प्रार्थी कर्मकार का नियोजन कार्यालय से विपक्षी नियोजक ने नाम मंगवाकर नियमित नियुक्ति की गई थी इसलिए कर्मकार का सेवा से पृथक करना विधिसम्मत नहीं है।

इसके प्रतिकार में विपक्षी के विद्वान प्रतिनिधि ने बहस की कि प्रार्थी को केवल संक्षिप्त समय के लिए ग्रीष्म ऋतु में पानी भरने व पिलाने के हिसाब से प्रतिदिन की मजदूरी पर रखा गया था तथा कोई नियमित नियुक्ति नहीं हुई। प्रार्थी ने कुल 86 दिन कार्य किया था तथा ज्योंही ग्रीष्म ऋतु समाप्त हुई, हटा दिया गया था। प्रार्थी की कोई स्वीकृत पद के लिए नियुक्ति नहीं थी।

विपक्षी के विद्वान प्रतिनिधि ने न्यायाधिकरण का ध्यान न्यायिक विनिश्चय रेजीकुमार व अन्य बनाम निदेशक स्वास्थ्य सेवाएं केरल व अन्य (2009) 16 एस सी सी 385 की ओर आकृष्ट किया है।

मैंने उभय पक्ष के विद्वान प्रतिनिधिगण की बहस पर मनन किया एवं माननीय उच्चतम न्यायालय के उपरोक्त न्यायिक विनिश्चय का सम्मानपूर्वक परिशीलन किया।

अब यदि प्रार्थी की साक्ष्य पर गौर करें तो प्रार्थी साक्षी लल्लू लाल मीणा ने अपनी मुख्य परीक्षा तो स्टेटमेंट ऑफ क्लेम में वर्णित अभिकथनों की शपथ पत्र पर दी है। जिरह में इस गवाह ने यह साफतौर से स्वीकार किया है कि प्रदर्श-1 के अनुसार उसकी पानी पिलाने वाले कर्मचारी के पद पर पूर्णतया अस्थाई व अल्प अवधि के लिए रखा था तथा उसने 144 दिन कार्य किया, कौन से माह में कितने दिन कार्य किया उसे मालूम नहीं है लेकिन माह जुलाई 1994 से नवम्बर 1994 तक कितने दिन काम किया उसे पता नहीं है तथा उसको 22/-रु० प्रतिदिन के हिसाब से भुगतान किया था जो उसको मिल गया था तथा पानी पिलाने का पद स्थायी है या अस्थाई उसे पता नहीं है तथा रागोपाल, मदनलाल व हीरालाल को भी हटा दिया है।

विपक्षी साक्षी-1 भगवत सिंह ने अपनी मुख्य परीक्षा जवाब में वर्णित अभिकथनों के आधार पर शपथ पत्र पर दी है तथा इस गवाह ने दस्तावेजात् प्रदर्श आर-1 से प्रदर्श आर-7 के बार में परिसाक्ष्य दी है तथा इस गवाह की साक्ष्य जिरह में अविकल रही है तथा इस गवाह से इस बिन्दु पर कोई प्रतिपरीक्षण नहीं है कि प्रार्थी कर्मचारी ने 86 दिन से अधिक कार्य किया हो या निरन्तर एक वर्ष तक कार्य विपक्षी संस्थान में किया हो।

इस प्रकार प्रार्थी की साक्ष्य से ही यह स्वीकृत स्थिति है कि प्रार्थी को अल्प अवधि यानी गर्मी के मौसम के लिए पानी पिलाने के लिए दैनिक मजदूरी पर रखा था तथा प्रार्थी ने केवल 86 दिन कार्य करना प्रदर्श आर-3 से प्रदर्श आर-7 के दस्तावेजात् से प्रकट है तथा प्रार्थी ने एक वर्ष में कोई 240 दिन कार्य किया हो या एक कलेण्डर वर्ष में कार्य किया हो या प्रार्थी का नियमित चयन प्रक्रिया से कोई स्वीकृत पद के विरुद्ध नियुक्ति हुई हो, ऐसा प्रार्थी की साक्ष्य से ही स्थापित नहीं है तो फिर माननीय उच्चतम न्यायालय के उपरोक्त न्यायिक विनिश्चय की रोशनी में प्रार्थी को दैनिक वेतन भोगी के रूप में गर्मी के मौसम के लिए पानी पिलाने के कार्य के लिए रखा गया था ज्योंही गर्मी का मौसम समाप्त हुआ, प्रार्थी को हटा दिया गया था जो प्रार्थी व अप्रार्थी के मध्य संविदा के अधीन ही हटाया जाना प्रकट है तो फिर प्रार्थी एवं अप्रार्थी का नियोजक एवं कर्मकार का संबंध भी विद्यमान नहीं रहा है तथा समय व्ययगत होने से प्रार्थी को अप्रार्थी द्वारा सेवा से हटाना उपरोक्त विवेचन के फलस्वरूप विधिसम्मत पाया जाता है। अतः उपरोक्त विवेचन के फलस्वरूप इस रेफरेंस का उत्तर निम्न प्रकार देते हुये निम्न अधिनिर्णय पारित किए जाने योग्य है।

अधिनिर्णय

अतः “सहायक प्रोवीडेन्ट फण्ड कमिश्नर प्रशासन जयपुर का श्री लल्लू लाल मीणा की सेवाएं पर्यावसान करने का कृत्य विधिसंगत होना पाया जाता है तथा प्रार्थी कोई अनुतोष पाने का हकदार नहीं है तथा मामले के तथ्य एवं परिस्थिति में पक्षकारान् खर्चा अपना अपना स्वयं वहन करेंगे।”

गिरीश कुमार शर्मा, न्यायाधीश

नई दिल्ली, 29 जून, 2017

का.आ. 1596.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, सीटीओ कम्पाउंड, भोपाल एवं उनके कर्मचारी के प्रबंधन के संबंध में निर्यातकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (केस सं. सीजीआईटी/एलसी/आर/ 166/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-40012/243/2000-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1596.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R/166/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in

relation to the General Manager, Telecom, CTO Compound, Bhopal and their workman, which was received by the Central Government on 08.06.2017.

[No. L-40012/243/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/166/2000

Shri Tarachand Kushwah,
S/o Bhanwarlal Kushwah,
Near VIP Guest House, Lalghati,
Bhopal (MP)

...Workman

Versus

Chief General Manager,
Deptt. Of Telecommunication,
Hoshangabad Road, MP Circle,
Bhopal (MP)

General Manager,
Telecom, CTO Compound,
T.T.Nagar, Bhopal

...Management

AWARD

Passed on this 9th day of May, 2017

1. As per letter dated 14-9-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/243/2000-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom/ General Manager, Telecom in terminating the services of Shri Tarachand Kushwah S/o Bhawarlal Kushwah w.e.f. 9-10-93 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/3. Case of workman is that he was appointed as skilled labour on 1-1-89 after following the required procedure. His service record was excellent. His services were terminated orally on 9-10-93 without explaining any reasons. That since his initial appointment till termination of his service, he completed more than 240 days continuous service during each of the year. 2nd party had not complied provisions under Chapter V of ID Act without terminating his service, permission from Government was not obtained, retrenchment compensation was not paid to him. He was not served with any chargesheet, any enquiry was not conducted against him. After termination of his service, management of 2nd party appointed new employees. Those employees are still working in establishment of 2nd party. He filed OA No. 824/93, said OA was disposed off on 24-6-99 observing that workman can raise the dispute before ALC/LC. That establishment of 2nd party is engaged in work of permanent nature. Always employees are required if completion of workman claimed that he had been working more than six months as trained employee, he was eligible to be regularized. 2nd party instead of regularizing his services orally terminated him. His termination is illegal. Workman prays for his reinstatement with backwages.

3. 2nd party management filed Written Statement at Page 3/1 to 3/3 opposing claim of workman. 2nd party submits that casual labours are not recruited in the department. Casual labours are engaged for available work. Ist party workman was not appointed as skilled labour following recruitment procedure. For recruitment in department, there are rules and regulations. After the employees are appointed training is given. That CAT Jabalpur had rejected petition filed by workman observing that he was not regular employee. Ist party was not appointed. There is no question of his termination of service. It is reiterated that workman was not appointed in department. There is no question of appointing other persons after his termination. Petition filed by workman in CAT Jabalpur was disposed. For regular appointment, rules of the department are required to be followed. The post should be advertised, interview calls are required to be issued. Workman was not appointed following such procedure. Workman is misleading court making false grounds. As workman was not appointed or terminated by management, there is no question he being unemployed after so called termination. 2nd party prays for rejection of claim of workman.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Telecom/ General Manager, Telecom in terminating the services of Shri Tarachand Kushwah S/o Bhawarlal Kushwah w.e.f. 9-10-93 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. The term of reference pertains to legality of the termination of services of Ist party. Claim is opposed by management denying his appointment or termination. Ist party workman filed affidavit of his evidence supporting his contentions in statement of claim. That initially he was engaged as skilled labour(electrician/ helper) on daily rate basis on 1-1-89. That he was continuously working till 9-10-93. He was working under JTO K.C.Jain, K.K.Jain, A.W.Khan and one Mr. Tripathi. That his working days were recorded in muster rolls. That he completed 240 days continuous service preceding termination of his service. That he had continuously working for 29 days in 1989, 212 days in 1990, 266 days in 1991, 336 days in 1992, 280 days in 1993. Services are terminated in violation of Section 25-F of ID Act. That he was paid Rs.27 per day in 1992. Thereafter he was paid Rs.40 per day. That in his cross examination, workman says appointment letter in writing was not given to him. His name was not sent through Employment Exchange. Written test was not taken, he was not interviewed. He was doing work of oiling, cleaning telephone machines, fault removal. He was not issued order of termination in writing. He was working on muster roll. Muster roll was prepared by JE. He had not submitted application for supplying copy of muster roll. He denies that copy of muster roll produced on record is bogus. Workman denied that he had not worked more than 240 days during any of the calendar year. He denies that he being casual labour was not paid by voucher. Payment was made as per muster. That he had not submitted application for production of original vouchers. workman denied that the zerox copy of voucher produced by him are bogus. Workman denied that he was engaged till the work was available. Workman denied after completion of project, he was disengaged. Workman was re-examined. Documents Exhibit W-1 to 3 were admitted in evidence. Again workman was re-examined and documents W-5,6 were admitted in evidence. Ist party workman in his further cross examination says that curfew was imposed in December 1992. The curfew pass was issued by Telephone office. Other department did not issue curfew pass. Exhibit W-1 bears signature of Assistant Engineer, Telephone and not of other officers. He not submitted application for issuing of Exhibit W-1. He denied that list of employees Exhibit W-3 was prepared by him and produced in the case. He denied that document Exhibit W-1 is false. In his further cross, Ist party workman says he not submitted application for documents Exhibit W-5,6. He not submitted application under RTI Act. He received documents Exhibit W-5,6 in 1993, 94. He was unable to explain why he didn't submit those documents along with his affidavit of evidence. In 1993, he received duty chart from A.M.Khan, P.N.Singh and A.K.Jain. that he not produced Exhibit W-5,6 along with his affidavit. Those documents are not bearing name and seal of BSNL. The witness explained that BSNL was not in existence during said period. Exhibit W-5, 6 were bearing signatures of officers. Workman denied that he has fabricated Exhibit W-5,6 and produced in the case.

6. Management filed affidavit of evidence of Shri P.N.Singh supporting contentions of 2nd party in Written Statement. That Ist party workman was engaged as casual labour. He was not given appointment letter. Workman was not appointed by the department. His engagement was as casual labour. The old exchange required labours. The old exchange was closed and electronic exchange did not require labours. That workman himself stopped working from October 93. Work carried by workman was of casual nature, any post was not lying vacant there was no need to obtain permission from Government for termination of his service as casual labours were engaged as per need of work. Management's witness in his cross says he doesnot know workman personally. He has no knowledge during what period the workman was working in the exchange. As per record, he has stated in his affidavit workman not completed 240 days continuous working during any of the year. That he left work in October 1993. Workman was not served with notice as he was engaged as casual labor. Management's witness claims ignorance under whom workman was working. He also claims ignorance about representations submitted by workman after termination of his service. He denies that he has no knowledge of the case. That as per record, he has stated that workman was working in the department was told about it by Shri K.C.Jain. Evidence of management's witness is clear that the workman was engaged as casual labour but he was not appointed as regular employee. Evidence of workman that he was working from 1-1-89 to 9-10-93 is corroborated by documents. Exhibit W-1 curfew pass issued in December 1992, W-2 is order issued by Assistant Engineer for entry during curfew period dated 7-10-93. List of employee Exhibit W-3 name of Ist party workman is appearing at Sl.No.75 shown as casual labour. Documents Exhibit W-5,6 is copy of muster roll and

W-6 is copy of attendance sheet. In Exhibit W-5, name of workman is appearing at Sl.No.5. Said document is for the period December 89 to December 93. Attendance of workman has been recorded though suggestions are given that W-5 doesnot bear seal and signature of the officer. Careful perusal of Exhibit W-5 shows seal and signature of JTO on several pages. Exhibit W-6 is copy of duty allotment register. Name of workman is found in some pages. Evidence of workman is corroborated by documentary evidence. On the other hand, evidence of management's witness is not supported by any documents. Management's witness got knowledge about working of workman from Shri K.C.Jain and others. His evidence is of hear say nature and cannot be preferred to the evidence of workman corroborated by documents.

7. Learned counsel for 2nd party Shri R.S.Khare relies on ratio held in case between-

Batala Coop.Sugar Mills Ltd versus Sowaran Singh reported in 2005(8)SCC-481. Their Lordship dealing with Section 25-F, 25 B of ID Act and requirement of 240 days continuous service burden of proof lies on workman. It is for workman to adduce evidence apart from examining himself or filing an affidavit to prove the said factum.

From evidence discussed above, Ist party workman has discharged the burden and his evidence is sufficient to hold that he was continuously working more than 240 days preceding termination of his service. As per evidence of management's witness, he claims ignorance whether workman was not paid retrenchment compensation. Termination notice was not issued as workman was engaged as casual labour. When workman has completed more than 240 days termination of his service without notice or paying retrenchment compensation is in violation of Section 25-F,B of ID Act and as such illegal. For above reasons, I record my finding in Point No.1 in Negative.

8. Point No.2- In view of my finding in Point No.1 termination of workman is illegal, question remains for consideration is whether workman is entitled for reinstatement with backwages. On the point learned counsel for Ist party Shri R.K.Soni relies on ratio held in case between-

Tapash Kumar Paul versus BSNL and another. In above judgment, their Lordship observed in the very nature of things there cannot be straitjacket formula for awarding relief of backwages. All relevant considerations will enter the verdict. More or less it would be a motion addressed to the discretion of the tribunal. Full backwages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. Their Lordship further observed plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workman. It is as if the order has never been and so it must ordinarily lead to backwages too. For instance, the industry might have closed down or might be in severe financial doldrums, the workmen concerned might have secured better or other employment elsewhere and so on.

Copy of judgment in Writ Petition 20237/14 is also brought to my notice. His Lordship following ratio held in case of Gundu Surwase Vrs Kranti Junior Adhyapad Mahavidyalaya reported in 2013(10)SCC-324, Tapash Kumar Paul versus BSNL that is discussed supra 2014(4)SCR-875 granted reinstatement without backwages.

9. Learned counsel for 2nd party management Shri R.S.Khare relies on ratio held in case between-

Assistant Engineer, Rajasthan Development Corporation and another versus Gitam Singh reported in 2013(2)SCC(L&S)-369. Their Lordship dealing with wrongful termination in violation of Section 25-F of daily rated worker working for short period of 240 days only modified order of reinstatement with 25 % backwages to compensation of Rs.50,000/- said judgment is not overruled in Tapash Kumar case.

Shri R.S.Khare also relies on ratio held in Umadevi's case reported in 2006(4)SCC-1. Their Lordship dealing with casual labour, temporary employees held such employee donot have any right to regular or permanent public employment. Temporary contractual casual adhoc or daily wage public employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it.

I may mention that violation of Section 25-F of ID Act is not dealt in judgment in Umadevi's case.

Shri R.S.Khare relied on ratio held in case between MP State Agro Industries Limited and another versus S.C.Pandey reported in 2006(2)SCC-716. Their Lordship held daily wager doesnot hold a post. He is not appointed in terms of provisions of act. Their Lordship further held only because a temporary employee completes said period of service, that by itself would not confer any legal right upon him to be regularized in service.

Similar view has been taken in case between Himanshu Kumar Vidyarthi versus State of Bihar reported in 1997-LAB.I.C.2075.

10. The evidence of Ist party is clear that he was not appointed following recruitment process, post was not advertised, he was not called for interview, appointment letter was not given to him. Evidence on record shows workman was working from 1-1-89 till termination of his service in October 1993 for about more than 4 years.

Considering nature of his engagement and period of his working, compensation Rs.One Lakh would be appropriate. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom/ General Manager, Telecom in terminating the services of Shri Tarachand Kushwah S/o Bhawarlal Kushwah w.e.f. 9-10-93 is illegal.
- (2) 2nd party management is directed to pay compensation Rs.One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1597.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अध्यक्ष सह प्रबंध निदेशक, राष्ट्रीय सीड्स निगम लिमिटेड, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (केस सं. सीजीआईटी/एलसी/आर/71/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-42012/4/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1597.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R/71/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Chairman-cum-Managing Director, National Seeds Corporation Ltd., New Delhi & Others and their workman, which was received by the Central Government on 08.06.2017.

[No. L-42012/4/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/71/2013

Shri C.R.Chakravarty,
S/o Jatin Chakravarty,
C/o Pal STD PCO Jora,
PO Krishak Nagar,
Raipur

...Workman

Versus

Chairman cum Managing Director,
National Seeds Corporation Ltd.,
Neej Bhawan, Pusa Complex,
New Delhi

Regional Manager,
National Seeds Corporation Ltd.,
Sector B, Industrial Estate Govindpura,
Bhopal

Area Manager,
National Seeds Corporation Ltd.,
32/1068, Indira Chowk, Shyam Nagar,
Raipur

...Management

AWARD

Passed on this 24th day of April, 2017

1. As per letter dated 26-4-13 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-42012/4/2013-IR(DU). The dispute under reference relates to:

“Whether the action of the management of National Seeds Corporation Ltd. Raipur in terminating the services of Shri C.R.Chakravarty w.e.f. March 2012 is legal and justified? What relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of workman is that he was appointed as clerk on daily wages on 2-6-05 by 2nd party Area Manager National Seeds Corporation. He continuously worked till 30-3-12. He was not given appointment letter by 2nd party No.2. His attendance was marked in the attendance sheet after making payment of wages. His signatures were obtained in attendance sheet. Without assigning any reasons, his services were terminated by 2nd party no.2 from 1-4-12. Workman reiterates he was continuously working as clerk from 2-6-05 to 30-3-12. Enquiry was not conducted against him. Chrgsheet or showcause notice were not issued to him. He worked more than 240 days every year. He was terminated without notice, retrenchment compensation was not paid to him. His termination amounts to illegal retrenchment without complying Section 25-F of ID Act. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party submits Ist party was engaged in duty as casual worker as per necessity of work since 2005. He was paid Rs.50 per day. 2nd party institute is established as per notification dated 6-3-82. Said notification incorporates recruitment rules of daily wage Class IV employees. The appointment of class IV employees was to be made by Chief Administrative Officer, Account Officer, Asstt. Manager. The age of such employee should not be more than 25 years. The pay scale was settled Rs.3900-70-5300. IDA Rs.2550-55-2660-3200. The conditions were required to be strictly followed. There was no possibility of such conditions. That Shri Wani, Area Manager was appointed in 2005. He written letter dated 28-10-05. It was clearly instructed that appointment of daily rated employees shall not be accepted even on request of concerned employees. That Ist party was engaged on duty as casual labour as per requirement time to time. He was paid Rs.50 per day. There was no publication for the appointment as per notification, the limit was below 25 years. Ist party workman was engaged when he was of 37 years age. The pay scale noted above was for Class IV employees. Ist party was made labour payment on daily basis. Workman had not raised any demand as he was aware of above status. It is reiterated that Ist party was engaged as casual labour and not engaged in muster roll. He was not paid TA DA. 2nd party had written letter dated 29-6-06 to Bhopal Office as per communication dated 3-8-06. Bhopal office refused to give Ta Da to workman as he was daily rated employee. Ist party being casual worker no question arose w.r.t. claim of Ist party workman. Ist party workman cannot be treated as superannuated/ retired. He is not entitled to any compensation. No appointment letter was issued to Ist party. He was paid Rs.50 per day. As services of Ist party were not required, his services were dispensed. Ist party cannot compare with regular class IV employee as he was never appointed to the post of clerk. Ist party has not produced documents. As Ist party was purely engaged as casual labour, showcause notice for terminating his services was not required. There was no question of holding DE. Workman has not produced documents about his working 240 days. Provisions of Section 25-F ID Act are not attracted. 2nd party submits that claim of Ist party deserves to be dismissed.

4. Ist party filed rejoinder on 24-10-14 Ist party submits that he was engaged as daily wage employee. After payment of wages, his signatures were obtained in vouchers. 2nd party itself handed over copies of vouchers to him. 2nd party No.2 was looking affairs of the whole area office, Raipur. That Area Manager is administrative post.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of National Seeds Corporation Ltd. Raipur in terminating the services of Shri C.R.Chakravarty w.e.f. March 2012 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

6. Point No.1- Term of reference pertains to legality of termination of services of Ist party. Ist party workman filed affidavit of his evidence. In his affidavit of evidence, he stated that he was appointed on post of clerk on 2-6-05. He was continuously working except Sunday till 30-6-12, appointment letter was not given to him. His attendance was recorded on the sheet of attendance. His services were terminated orally on 1-4-12. He worked more than 240 days during each of the year. He was not served with notice of termination, retrenchment compensation was not paid to him. After termination of his service, he is unemployed. In his cross-examination, Ist party workman says he has not produced documents about his educational qualifications. He passed 10th standard. He has not passed typing exam. Before his appointment, no written test was taken. He was engaged as seasonal labour. Appointment letter was given to him. He was paid wages for his working days. He was doing work of supplying drinking water and other office work. He had not submitted application for his appointment. Orally he was directed not to come for work after March 2012.

7. Management filed identical affidavit of evidence of Shri Shankar Ram and Rajesh Mawar. Shankar Ram in his affidavit of evidence says he is working in Regional Office, National Seed Corporation, Bhopal from 1984. In 1993, he was transferred to Lucknow where he was working till 2013. That workman Shri C.R.Chakravorty was engaged as casual labour at RP Office, he was paid Rs.50 per day. Ist party had not worked for 240 days during any calendar year. Pay scale of Class IV employee is Rs.3900-70-5300. Workman was paid Rs.50 per day. Record w.r.t. casual employee is not maintained. In his cross-examination, management's witness says he did not see Ist party working in RP office. He got knowledge about case from available record. Any documents w.r.t. working of Ist party is not produced. Ist party was not served with notice, retrenchment compensation was not paid to him. When regular employee was absent, Ist party was engaged on wages. Rajesh in his affidavit of evidence has stated that Ist party was engaged as casual labour, he was supplying drinking water, tea and doing cleaning, sweeping work in the office. Ist party was paid Rs.50 per day. He had not completed 240 days continuous service during any calendar year. Management's witness No.2 in his cross says at RP office, casual workers were engaged for convenience of officers and cultivators. Regional office has 4 units, the employee referred in his affidavit is covered in Class IV category. The clerk is covered in class III category. He had not seen working of Ist party workman. Workman was not served with notice, retrenchment compensation was not paid to him.

8. Management has produced documents Exhibit M-1 which is admitted by Ist party. Exhibit M-1 consist of 218 pages. Considering services of Ist party were terminated from 1-4-12, period of 12 calendar months preceding his termination comes 1-4-11. The attendance of workman during said period is produced at Page 196 to 218. Attendance sheet is maintained for 15 days period. The attendance of Ist party is marked 13 days in each of the payment sheets. Document Exhibit M-1 page 196 to 218 established that workman worked more than 240 days preceding termination of his service. As per evidence of management's witness in cross examination, termination notice was not issued to workman. He was not paid retrenchment compensation therefore termination of services of workman is in violation of Section 25-F (1)(a)(b) of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

9. Point No.2- In view of my finding in Point No.1 termination is illegal for violation of Section 25-F of ID Act, question remains for consideration whether workman is entitled for reinstatement with backwages. The evidence of Ist party is clear that he was not working as clerk rather he was working as casual labour. His services are terminated in violation of Section 25-F of ID Act. Learned counsel for Ist party Shri S.Mishra submits that workman was in continuous service for 7 years. His services are illegally terminated. Claim of workman for reinstatement with backwages may be allowed.

10. In support of his argument, learned counsel relies on ratio held in

Case between Sunil Kumar Kushwaha versus Deputy Narcotics Commissioner in Writ Petition No.22063/15. In said judgment, their Lordship following ratio held in Hindustan Tin Works versus employees in 1979(2)SCC-80. Ratio held in Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya 2013(10)SCC-324. Ratio held in case between Tapash Kumar Paul versus BSNL 2014(4)SCR-875 allowed reinstatement with back wages modified the award for compensation of Rs.75,000 to reinstatement with backwages. I find no reason to disagree with ratio held in above referred cases.

Considering the Ist party workman continuously worked as casual labour for 7 years, his services are terminated without notice, retrenchment compensation was not paid to him, relief for reinstatement with backwages is just to be allowed. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of management is illegal. Termination of workman is set aside.
- (2) 2nd party is directed to reinstate workman on post of labour with full backwages @ Rs.50 per day.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1598.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार, भोपाल व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (केस स. सीजीआईटी/एलसी/आर/124/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-40012/119/2000-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1598.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R/124/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Telecom, Bhopal & Others and their workman, which was received by the Central Government on 08.06.2017.

[No. L-40012/119/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/124/2000

Shri Shobaram Vishwakarma
C/o Arun Saxena, Sothalia Road,
Ravishankar Nagar,
Biaora,
Rajgarh

...Workman

Versus

Chief General Manager,
Telecom, Telecom Bhawan,
Hoshangabad Road, Bhopal

The TDE,
Rajgarh, At Biaora,
Rajgarh

...Management

AWARD

Passed on this 19th day of May, 2017

1. As per letter dated 30-6-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/119/2000-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Shobaram Vishwakarma S/o Nanhelal Vishwakarma w.e.f. April 95 is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/4. Case of workman is that he was initially appointed in February 1985 in Telecom Department as casual labour in different Telecom Exchange under control of SDO, Biaora, Distt. Rajgarh. That his service record was unblemished.

That he continuously worked from 1985 to April 1995. He continuously worked more than 240 days during each calendar year. He was entitled to be regularized in the department. That his services were dispensed in April 1995 without following statutory provisions. He was discriminated by denying regularization while terminating his services violating principles of natural justice. Ist party further contends that act of management about unfair labour practice and victimization that termination of his service is in violation of Section 25-F of ID Act. He was not served with notice, any enquiry was not conducted against him. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party submits that workman was initially engaged in the year 1991. He worked for 92 days in 1991, 30 days in 1992, 5 days in 1993, 64 days in 1994, 5 days in 1995, workman never completed 240 days continuous service in a calendar year. Appointment of workman was not against vacant post. He is not regular employee of the management. 2nd party prays that reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Shobaram Vishwakarma S/o Nanhelal Vishwakarma w.e.f. April 95 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. Point No.1- The term of reference pertains to legality of termination of services of workman. Workman filed affidavit of his evidence. He stated that he was appointed in February 1995 in the department. His services were orally terminated. He was not served with notice, retrenchment compensation was not paid to him. Enquiry was not conducted against him. In his cross-examination, workman says appointment letter was received by him. He claims ignorance whether appointment letter is produced in the case. That he was orally interviewed. He had worked at Narsingarh from 1989 to 1990, Bevara from 1990 to 1995 & Kareli from 1985 to 1987. He denies suggestion that he had worked for 92 days in 1991, 30 days in 1992, 5 days in 1993, 64 days in 1995. Suggestion is denied by workman that he not completed 240 days continuous service.

6. 2nd party field affidavit of evidence of Shri Shailendra, however said witness not appeared for evidence. His evidence could not be considered.

7. Learned counsel for workman Shri Arun Patel pointed my attention that application for production of document was submitted by Ist party on 7-7-05, 24-10-13. The order was passed for production of document by management on 26-2-14, management had not produced documents as per the order. Shri Arun Patel submits that adverse inference be drawn against management. In support of above argument, reliance is placed in case between

Gouri Shanker versus State of Rajasthan reported in 2016(1)SCC(L&S) 546. Their Lordship dealing with withholding of documents held adverse inference on effect of non-production of muster rolls by the employer tried to be drawn against employer.

Despite order passed for production of document, the documents are produced. Evidence of workman deserve to be believed that he worked more than 240 days during each of the year 1985 to 1995. Evidence of workman is clear that his services were orally terminated, notice was not issued, any enquiry was not conducted. Considering the evidence of workman, it is established that services of workman are terminated in violation of Section 25-F(a,b).

8. Shri Arun Patel relies on ratio held in case between

Director, Fisheries Terminal Division versus Bhikubhai Meghajibhai Chavda reported in AIR-2010-SC-1236. Their Lordship dealing with continuous service of 240 days held burden of proof shift to employer to prove that he did not complete 240 days service in requisite period to constitute continuous service.

Considering the evidence and ratio held in above case, I record my finding in Point No.1 in Negative.

9. In view of my finding in Point No.1 that workman is terminated in violation of Section 25-F(a,b) of ID act as such illegal, question remains for consideration is whether workman is entitled for reinstatement with backwages. Evidence of workman shows that he had worked from February 1985 to April 1995. That after termination of his service, he was unemployed.

10. Learned counsel for Ist party relies on ratio held in case between

Hindustan Tin Works Private Limited versus employees of Hindustan Tin Works Private Ltd. In para-6 of the judgment, their Lordship discussed if the normal rule in a case like this is to award full back wages, the burden will be on the appellant employer to establish circumstances which would permit a departure from the normal rule. To substantiate the contention that this is an exceptional case for departing from the normal rule, it was stated that loss is mounting up and if the appellant is called upon to pay full back wages in the aggregate amount of Rs.1,80,000 it would shake the financial viability of the company. In said case, award was modified to the effect that the retrenched workmen who are reinstated shall be paid 75 % backwages.

Reliance is also placed on ratio held in case between Ajay Pal Singh versus Haryana Warehousing Corporation reported in 2015(6)SCC-321. Their Lordship dealing with Section 25-F of ID Act and its non-compliance held on facts order of retrenchment in violation of Section 25-F being invalid, relief of reinstatement with full backwages awarded by Labour Court deserves to be restored.

In case between Tapash Kumar Paul versus BSNL reported in 2014(4)SCR-875, their Lordship also considered ratio held in Deepali Gundu case and laid down conditions when reinstatement by awarding compensation can be granted- (i) where industry is closed, (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit, (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and/ or (iv) when he has lost confidence of the management to discharge duties.

In case of Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10)SCC-324. Their Lordship held reinstatement entitle such employee to claim full backwages, denial of backwages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay backwages. Where employer wants to deny backwages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

11. Management has not adduced any evidence. Workman in his evidence has claimed he is unemployed after termination of his service. His affidavit is not explaining how he is surviving all those years since 1995. Under such circumstances, workman deserves to be reinstated with 25 % back wages. Accordingly I record my finding in Point No.2.

12. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom in terminating the services of Shri Shobaram Vishwakarma S/o Nanelal Vishwakarma w.e.f. April 95 is not legal and proper.
- (2) 2nd party is directed to reinstate workman to his original post with 25 % backwages.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1599.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विभागीय अभियंता, दूरसंचार विभाग ओएफसी परिजन खण्ड-1, दूरसंचार फैक्टरी, जबलपुर एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (केस सं. सीजीआईटी/एलसी/आर/50/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-40012/35/2010-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1599.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R/50/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Divisional Engineer, Telecom OFC Pariyojna Khand-1, Telecom Factory, Jabalpur and their workman, which was received by the Central Government on 08.06.2017.

[No. L-40012/35/2010-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/50/2011**

Shri Deepak Kumar,
S/o Shri Narbadlal,
R/o Bajrang Colony,
K-18, 103, Power House,
Jabalpur

...Workman

Versus

Divisional Engineer,
Telecom OFC Pariyojna Khand-I,
Telecom Factory, Gate No.4,
CTS Campus, C-Block, Wright Town,
Jabalpur

...Management

AWARDPassed on this 17th day of April, 2017

1. As per letter dated 7-6-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/35/2010-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Divisional Engineer, Telecom, OFC Project, Part-I, Telecom Factory, Jabalpur in terminating the services of Shri Deepak Kumar S/o Shri Narbadlal w.e.f. 22-5-2000 is legal and justified? What relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of workman is that he was working in department from 10-1-87 to 22-5-00. He was continuously working to the satisfaction of his superiors. He worked more than 240 days during each of the calendar year from 87 till his termination. His services were orally terminated without following law. Because of his continuous working from 1987 to 22-5-00, he was entitled for temporary status and regular service. His services were not regularized neither he was given temporary status. Oral termination of his service is illegal. Ist party workman further submits that he worked on post of sweeper cleaning office and laboratory against vacant post. He worked more than 240 days during each of the calendar year. Management adopted pick and chose method and terminated his services. Junior workers are still working in the department, he was not paid one month salary in lieu of notice, retrenchment compensation was not paid to him. Termination of his service is violative of Article 21 of the constitution. After termination of his service, he is suffering irreparable loss. On such ground, workman prays for his reinstatement/ compensation.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party submits that workman was not continuously working from 10-1-87 to 22-5-00. Workman not working continuously for more than 240 days. Workman was not appointed in the department neither his services were terminated by management. Workman was not appointed on post of sweeper. Letter of appointment was not given to him. There was no question of giving temporary status or regularization of services of workman. In application submitted under Section 10 by workman, he had contented termination by Divisional Engineer OFC Jabalpur is not impleaded as party to dispute under reference. 2nd party submits that as workman was not appointed or terminated by it, there was no question of workman suffering hardship.

4. Ist party workman filed rejoinder reiterating contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Divisional Engineer, Telecom, OFC Project, Part-I, Telecom Factory, Jabalpur in terminating the services of Shri Deepak Kumar S/o Shri Narbadlal w.e.f. 22-5-2000 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

6. Ist party workman filed affidavit of his evidence claiming that he was continuously working from 1987 to 2000. He worked more than 240 days in each of the calendar year. In 1987, he was appointed on post of sweeper by M.C.Garhawal. his services were transferred to Good Luck Apartment, Gwarighat, Telecom Factory, Ranital, Gate No.4. that his services were terminated without notice. He was not paid retrenchment compensation. He worked for 13-14 years before termination of his service. In his cross, workman says appointment letter was not received by him, his name was not sponsored through Employment Exchange. He not appeared in departmental exam. One Ram Prasad was working as peon in office of 2nd party. Ram Prasad told him that work was available in office of 2nd party thereafter he met Officer Garhawal in office at Civil Lines. He was not acquainted with Mr. Garhawal. He was doing cleaning, sweeping work in morning one hour and evening. He denies that documents Exhibit W-1 to 4 are forged and fabricated. He admits that certificate issued by department bears outward number. Workman was unable to tell his working days in particular year. He denies that he not worked for more than 240 days during any of the year.

7. Management filed affidavit of witness Shri A.K.Shukla. Management's witness in his affidavit of evidence says workman was not appointed by the department. Appointment letter was not given to him. Workman did not work in the department, any post is not vacant in the department. Workman not work for more than 240 days during any of the year. In his cross-examination, management's witness says he is posted in Jabalpur office in September 2014. He denies that he didnot worked during 1988 to 2000. In his further cross, witness says Shri Garhawal and Nath were working as officer at Jabalpur but he is unable to identify their signatures. Management witness denied that workman worked more than 240 days. The record is preserved for 5 years, rules are not produced. Record of distribution of document is not produced. Form evidence of workman, documents Exhibit W-1 to 6 are admitted in evidence. In Exhibit W-1, it is certified by Sub-Divisional Engineer that workman was engaged as part time sweeper since last one year. Said certificate was issued on 30-12-95. Period of one year comes to 30-12-94. Exhibit W-4 is receipt about payment of contribution of Union for March 95 to March 96. In Certificate Exhibit W-2, it is certified that workman was working last 2 years. He was engaged as part time sweeper for cleaning work. Exhibit W-6 is application for leave submitted by workman on 6-5-96. In certificate W-3, the Sub-Divisional Engineer has certified that workman was working during the period 1987 to March 90- maximum one hour in a day. Documents Exhibit W-1 to 3 clearly shows that workman was engaged as part time sweeper during the year 87 to 90 & 93,94, 95. The notice to produce documents was filed by the Ist party. Ist party was allowed to adduce secondary evidence. Management has not produced documents about working days of workman.

8. Learned counsel for Ist party Shri R.K.Soni on the point relies on ratio held in case between

Director, Fisheries Terminal Department versus Bhikubhai Meghajibhai Chavda reported in 2010(2)MPLJ-30. Their Lordship dealing with workman hired on daily on a daily wage basis deposed that he had worked for 240 days during the period between 1985 to 1991, their Lordship held burden of proof shifts to the employer to prove that he did not complete 240 days service in the requisite period to constitute continuous service.

2nd party has not produced documents about working days of workman. Burden is not discharged by workman that workman had not completed 240 days continuous service. Evidence of Ist party is corroborated by document Exhibit W-1 to 3. In my considered view, when workman had established he was continuously working for more than 240 days preceding termination of his services, the oral termination of services of workman without paying retrenchment compensation, one months pay in lieu of notice is illegal for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

9. Point No.2- In view of my finding in Point No.1 termination of services of workman is illegal, question remains for consideration is whether workman is entitled for reinstatement with backwages as per document Exhibit W-1 & 3. Ist party workman was engaged for one hour in a day for cleaning work. Evidence in cross-examination of Ist party shows he had not received appointment letter. His name was not sponsored by Employment Exchange, workman not appeared for Written test.

10. Learned counsel for Ist party Shri R.K.Soni relies on ratio held in judgment in

Writ Petition No. 14719/2016. Hon'ble High Court Jabalpur bench upheld the order of reinstatement with backwages upholding termination in violation of Section 25-F of ID Act. Reliance is placed on ratio held in case between Tapash Kumar Paul versus BSNL. In above cited judgments, Apex Court held it is no doubt true that court may pass an order substituting order of reinstatement by awarding compensation but the same has to be based on justifiable grounds i.e. (i) where the industry is closed, (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit, (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and (iv) when he has lost confidence of the management to discharge duties.

Any such ground are not made out from evidence of management. However the evidence on record is clear that workman was engaged for one hour for cleaning work.

11. Learned counsel for 2nd party Shri R.S.Khare relies on ratio held in case between

Assistant Engineer, Rajasthan Development Corporation and another versus Gitam Singh reported in 2013(2)SCC(L&S)-369. Their Lordship dealing with termination in violation of Section 25-F of ID Act dealing whether relief of reinstatement or compensation to be allowed. Their Lordship need distinction should be drawn between daily rated worker and worker holding regular post. Services of daily wager respondent who worked for short period of 240 days only terminated by appellant employer in 1991 in contravention of Section 25-F. directions for reinstatement with continuity of service and backwages was found exercised of judicial discretion suffers from serious infirmity, compensation Rs.50,000 was allowed.

Reliance is also placed in case between Secretary, State of Karnataka and others versus Umadevi and others reported in 2006(4)SCC-1. Their Lordship dealing with service law w.r.t. casual temporary employee status and right held such employee donot have any right to regular or permanent public employment. Further temporary contractual, casual, adhoc or daily wage public employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and consequences flowing from it. That issuance of directions amount to creating another mode of public appointment which is not permissible.

I may make clear that termination of workman is not covered in above cited judgment. Therefore ratio cannot be applied to present case at hand.

Next reliance is placed in case between MP State Agro Industries Development Corporation Ltd and another versus S.C.Pandey reported in 2006(2)SCC-716. Their Lordship held daily wager doesnot hold a post as he is not appointed in terms of the provisions of the Act and rules framed thereunder and therefore he doesnot derive any legal right. Their Lordship dealing with termination in violation of Section 25-F of ID Act directed to pay compensation Rs.40,000.

In present case, evidence on record shows workman was engaged for cleaning work one hour in a day as temporary employee. Temporary employee is covered under Section 25-F of ID Act. However considering period and time of working, in my considered view, compensation Rs.40,000 would be adequate to meet the ends of justice. Accordingly I record my finding in Point No.2.

12. In the result, award is passed as under:-

- (1) The action of the management of Divisional Engineer, Telecom, OFC Project, Part-I, Telecom Factory, Jabalpur in terminating the services of Shri Deepak Kumar S/o Shri Narbadlal w.e.f. 22-5-2000 is not legal and proper.
- (2) 2nd party is directed to pay compensation Rs.40,000 to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1600.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, सरकार अफीम और एल्कालोइड फैक्टरी, नीमच एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (केस सं. सीजीआईटी/एलसी/आर/107/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-42012/25/2000-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1600.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R/107/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in

relation to the General Manager, Govt. Opium and Alkaloid Factory, Neemuch and their workman, which was received by the Central Government on 08.06.2017.

[No. L-42012/25/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/107/2003

PRESIDING OFFICER : SHRI R.B. PATLE

Shri Abdul Hameed,
s/o Shri Munna Choudhary,
Hammal Mohalla,
Juna Baghana,
Neemuch (MP)

...Workman

Versus

General Manager,
Govt. Opium and Alkaloid Factory,
Neemuch

...Management

AWARD

Passed on this 21st day of April, 2017

1. As per letter dated 6-6-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-42012/25/2000-IR(DU). The dispute under reference relates to:

“Whether the action of the management of General Manager, Govt. Opium and alkaloid Works in terminating the services of Shri Abdul Hameed, S/o shri Munna Choudhary w.e.f. 10-7-92 is justified? If not, to what relief the workman is entitled for?”

2. In present case, award was passed on 22-1-14. Workman filed M/1/14 for modification of the order of the ground that statement of claim pertaining to employee Abdul Hameed S/o Abdul Aziz was inadvertently submitted. Miscellaneous application was allowed and workman was permitted to submit statement of claim pertaining to workman Abdul Hameed, S/o Shri Munna Choudhary. In above circumstances, I narrate pleadings between parties.

3. After receiving reference, notices were issued to the parties. Ist party Shri Abdul Hameed, S/o Abdul Aziz has filed statement of claim at Pages 2/1 to 2/5. The reference relates to termination of services of Shri Abdul Hameed, S/o shri Munna Choudhary whereas statement of claim is filed on behalf of Shri Abdul Hameed, S/o Abdul Aziz. Thus the inherent irregularity is committed in filing the statement of claim. Ist party workman has pleaded that he was initially appointed as casual worker. His services were terminated from 6-2-93 without supplying order of termination. That he was continuously working more than 240 days in each of the calendar year. That Ist party submits that there were permanent post available in establishment of IInd party. Other colleagues were deliberately not classified with motive to deprive. The workman was classified as part time/ temporary employee. That junior employees were continued in service. Workman was not given notice of termination. Notice pay was not paid to him. Termination of his services was in violation of Section 25-F of I.D.Act. More than 100 employees working in establishment of IInd party. Establishment is covered under Chapter V-B of the I.D.Act. The services of the Ist party workman are terminated without obtaining permission of Government under section 25 of I.D.Act. Establishment of IInd party is not seasonal. The termination of services of workman is illegal for violation of Section 25-F, G, N of I.D.Act. On such ground, he prays for reinstatement with consequential benefits.

4. IInd party filed Written Statement at Pages 7/1 to 7/2. IInd party submits that the workman was engaged as daily wager. He has rendered 240 days continuous service as per his pleadings. Workman has also prayed for reinstatement. IInd party management submits that for work involved in the production of opium, management is required to engage services of casual labour for short and specified period. That casual labours are never employed and their services have been obtained entirely on necessity and availability of work. Workman never rendered services for more than 240 days in a year. That section 25-F of I.D.Act is not necessary for removal of services. That in the case of Casual Labour, his services commences in the morning of the day he reports to the assigned work, it automatically comes to end at the end of the day. The services of workman were taken on need basis. He was not on permanent nature of work, recruitment rules were not followed. IInd party prays for rejection of the claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of General Manager, Govt. Opium and alkaloid Works in terminating the services of Shri Abdul Hameed, S/o shri Munna Choudhary w.e.f. 10-7-92 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order

REASONS

6. Point No.1- workman filed affidavit of his evidence. In his affidavit, workman has stated that he was continuously working with 2nd party from 1979. His name was sponsored through Employment Exchange. He was appointed by 2nd party. He was continuously working from 1979 to 1992 as casual labour. He completed more than 240 days continuous service. He submitted application for reinstatement in service. Since 1992, he is unemployed. That he was getting pay Rs.750+DA. That management had issued circular allowing benefit of regular employee. He was not given benefit of said circular. His affidavit is further devoted to that Mohd Rafiq Nasurrudin had worked for 113 days was regularized in service. Said Mohd had not completed 240 days continuous service. One Rafiq S/o Abdul had worked for 259 days and 243 days was permanent. That Hayad Khan had worked only for 96 days was made permanent. He was not given benefit of permanency despite working for 13 years. In his cross-examination, workman says his affidavit was prepared by his Advocate about his case. He was engaged as labour. Post was not advertised. That call was received from Employment Exchange. That he produced circular about his appointment. He was engaged as per need. That he not completed 240 days continuous service during any of the year. Evidence of Ist party workman that junior employees Mohd. Rafiq S/o Razak were regularized. Their working days were less than 240 days. In the year 1993, 32 junior employees were given benefit of permanency remained unchallenged. Documents produced by workman Exhibit W-1 shows 55 working days during the period 18-2-91 to 30-6-91. Exhibit W-1(a) 178 page during 1-2-84 to 27-07-84- 91 days during 28-8-85 to 15-2-86, 156 days during period 2-2-86 to 15-7-86. Exhibit W-1(b) 33 days during the period 22-10-86 to 30-11-86, W-1(c) 94 days during 17-3-87 to 30-6-87, 70 days during 15-3-88 to 14-6-88, Exhibit W-1(g) shows 74 days during 15-4-90 to 19-6-90, 35 days during 18-5-92 to 10-7-92. Exhibit W-2 circular shows working period 29-10-81 to 21-6-82, W-1(a) working period 5-9-82 to 3-12-82, W-2(b) working period 2-2-83 to 30-6-83, Exhibit W-3 is copy of standing order clause 2(iii) provides for regularization of casual labour against the vacancies to be given as per seniority. As per Exhibit W-5, 32 employees were regularized. Workman was not included for regularization. Evidence on record shows workman was engaged as casual employee. Evidence on record shows that workman has not completed 240 days service during any of the year. However he was working as casual employee for years together, junior employees were regularized as per the provisions of standing order workman was discriminated, junior employees who were regularized in service were retained in service. Workman was terminated from service. Principles of last come first go was not followed therefore termination of services of workman is illegal. For above reasons, I record my finding in point No.1 in Negative.

7. Point No.2- In view of my finding in Point No.1 termination of services of workman is illegal, as principles of last come first go was not followed, workman was intermittently working with 2nd party. While regularizing services of casual employees, workman was illegally discriminated. 2nd party management had not obtained permission for termination of services of workman. Termination is in violation of Section 25-G,N of ID Act. Considering period of working of workman and other junior employees have been regularized, reinstatement of workman with 50 % backwages from date of order of reference would be appropriate. Accordingly I record my finding in Point No.2

8. In the result, award is passed as under:-

- (1) Action of the management of General Manager, Govt. Opium and alkaloid Works in terminating the services of Shri Abdul Hameed, S/o shri Munna Choudhary w.e.f. 10-7-92 is not legal and proper.
- (2) 2nd party management is directed to reinstate workman with continuity of service with 50 % backwages from date of order of reference.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1601.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप मंडल अधिकारी (टेलीग्राफ), रायगढ़ एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (केस सं. सीजीआईटी/एलसी/आर/67/08) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-40012/142/2000-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1601.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R/67/08) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Sub-Divisional Officer (Telegraphs), Raigarh and their workman, which was received by the Central Government on 08.06.2017.

[No. L-40012/142/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/67/08

Shri Akhilesh Kumar Mishra,
S/o Shri Kaliath Mishra,
Karbola road, Dipatoli,
Jashpurnagar,
Distt. Jashpur (MP)

...Workman

Versus

Sub -Divisional Officer (Telegraphs),
Raigarh

...Management

AWARD

Passed on this 8th day of May, 2017

1. As per letter dated 2-6-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/142/2000-IR(DU). The dispute under reference relates to:

“Whether the action of the management of the Sub-Divisional Officer (Telegraph) BSNL, Raigarh in terminating the services of their workman Shri Akhilesh Kumar Mishra w.e.f. December 1985 is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Pages 3/1 to 3/8. Case of workman is that he was employed by 2nd party during 1981 to 1985. He was terminated without any reasons in 1997. In 1989, scheme known as casual labour grant of temporary status and regularization scheme was introduced in Telegraph department. That as per said scheme, he was not considered for regularization instead his services were terminated. That he was engaged as casual labour in Sub-Divisional Office Raigarh from 1980 to 1985. Thereafter he was engaged for short period under Sub-Divisional Officer, District Jashpur, presently Chhattisgarh. He completed more than 240 days continuous service. That 2 Sub-Divisions Raigarh and Pathalgaon belong to Raigarh Division. New district Jashpur was created in 1997. 2 Sub-Divisions were part of same Revenue District Jashpur created in 1997. 2 Sub-Divisional Offices Raigarh and Pathalgaon was under the jurisdiction of Raigarh Division. That he worked for 31 days in 1981, 313 days in 1982, 292 days in 1983, 217 days in 1984. Working days has been certified by SDO Telegraph, Raigarh. Casual labours were continued on work after above said period but record is not available. That he was continued as casual labour. However record is available only about working for 140 days in 1985. That he was employed for installation and maintenance of telephone lines. Work is of regular nature. He was in regular employment. That Sub-Divisional Officer hired workman through contractor. The attendance of the workman

was maintained by the officer of Telecom department. Working of installation and maintaining of telephone line is regular work. Labours were permanently required. That in 1997, 2nd party without giving any reasons reduced his wages from Rs.400 per month to Rs.300 per month. Casual labour grant of temporary status and regularization scheme 1989 was introduced. Casual labour who worked more than 240 days in any year prior to 1989 were given benefit of temporary status and regularization. Though 1st party workman worked more than 240 days during 1982-83 and continued to work during 95 to 97 at Rajgarh and Pathalgaon, his services were terminated in 1997. That after termination of his service, 2nd party turned deaf hears on his request/ representations. He had raised dispute before ALC, Bilaspur. That 1st party workman and any casual labours engaged by SDO, Telegraph, Rajgarh had also approached Labour Commissioner, Bilaspur. After submitting failure report, dispute has been referred. Vide reply dated 20-12-99 before Labour Commissioner, Bilaspur, the management had stated that the workman was on muster roll from 1981 onwards. On above ground, workman submits that order of his termination is void. He prays for reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party submits that reference is not tenable on ground of delay and laches. The dispute arose in December 1985. However 1st party raised dispute in July 1999 after gap of 14 years. The dispute under reference deserves to be dismissed. 2nd party submits that reference is not tenable on ground of delay and laches. The dispute arose in December 1985. However 1st party raised dispute in July 99 after gap of 14 years. The dispute under reference deserves to be dismissed. 2nd party denied that workman was continuously working during 1981 to 1985 and subsequently till 1997. In 1980, department of Telecom sanctioned project for expansion of telecom network throughout the country. The project was sanctioned for Rajgarh District. For execution of such work, large number of labours were taken from open market on casual basis, daily wages through muster at end of the month for working days. Workman was also employed on similar basis. His engagement was purely casual on contract daily wage basis. Contract engagement begin on day reported for work and ended each day of the engagement. Workman was not engaged on regular basis against any sanctioned post. There was no master servant relationship between parties. Workman was free to come for working on the day if available. He was free not to come if so desire. The project work completed in 1990. Casual labours were discontinued. 2nd party submits that casual labours were engaged during the period December 198. Workman was intermittently engaged after May 1984. There was no obligation on management to call on work even if work was available. Workman must have decided not to report on work on the ground that his job was of casual nature and not regular. After June 1984, workman not reported for work. That workman had not completed 240 days continuous service. He is not entitled to regularization as per scheme of 1989. After May 1984, workman left job at his own will. There was no question of issuing notice for terminating his service as per provisions of ID Act. On such ground, 2nd party prays that claim of workman deserves to be rejected.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of the Sub-Divisional Officer (Telegraph) BSNL, Raigarh in terminating the services of their workman Shri Akhilesh Kumar Mishra w.e.f. December 1985 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. Point No.- Workman filed affidavit of his evidence supporting his contentions in statement of claim. That he was working in Divisional Office, Rajgarh as daily wage labour during the period 1981 to 1984. In 1981, he worked for 31 days, in 1982 for 213 days, in 1983 for 292 days. That in 1996, he was paid wages at Government rate, in 1997 his wages were reduced from Rs.400 per month to Rs.300 per month. His services were terminated without issuing notice. He was not paid retrenchment compensation. In 1997, his services were terminated. That he was engaged through contractor. The control was of the department. He was doing work of laying telephone lines and maintenance. That casual labour grant of temporary status scheme was introduced. He was not given benefit of the scheme.

6. From evidence of workman, document Exhibit W-1 is admitted in evidence. In his cross-examination, workman says Sameer Khan had engaged him on work. Sameer Khan was not earlier acquainted with him. He called him and engaged him on work. There was no advertisement for work. His name was sponsored through Employment Exchange, appointment letter was not received by him. Documents about his name sponsored through Employment Exchange are not produced. He was engaged on daily wages. His wages were paid by SDO, Chhattopadhyay and sometimes by Junior Engineer. He was unable to tell rate of wages paid to him. He denied that he was engaged as per

need of work. He was doing work of digging latches, laying cable lines, erecting poles etc. He denies that when such work was available, he was called for work. He was unable to tell whether Mr. Chhattopadhyay had retired. Workman was unable to tell on what basis Shri Chhattopadhyay issued Exhibit W-1. He admits that he worked in the department for the working days shown in Exhibit W-1. Thus it is clear that Exhibit W-1 is not disputed by the management. In document Exhibit W-1, his working days are shown. Working days of workman from May 83 to May 84 are more than 240 days. In cross-examination of workman, working days shown in Para-2 of his affidavit are not challenged.

7. 2nd party management submitted affidavit of evidence of Amarnath Singh SDO Phones, Rajgarh. Said management's witness has stated that TDM, Rajgarh had also expansion of telephone projects, casual labours were employed on day to day basis on need. The casual labours were paid daily wages. Ist party workman was employed by TDM, Rajgarh during December 81 to June 84. That Ist party workman never worked after June 1984. As per judgment by Hon'ble Supreme Court. Director of Telecom framed regularization scheme called casual labour grant of temporary status Regulation 1989. Under said scheme, casual labours continued to work on the scheme and worked 240 days in a year were required to be given temporary status/ regularized against regular post if available. In his cross-examination, management's witness says any document about attendance of workman are not produced. That attendance of workman was maintained in the register. Said register is not produced. Management's witness denies that Ist party workman was working in the department till 1997. Management's witness reiterates that workman was continuously working till 1984. Thereafter he was not working in the department. Management's witness denies that workman was terminated without notice, retrenchment compensation was not paid to him. 2nd party has not produced any documents about termination notice served on workman or he was paid retrenchment compensation.

8. Learned counsel for Ist party relies on ratio held in case between-

Surendra Nagar District Panchayat versus Dahyabhai Amarsingh reported in 2005(8)SCC-750. Their Lordship dealing with Section 25 B, 25-F of ID Act held requirement of 240 days continuous service. Onus to prove 240 days continuous service lies on workman. It is for workman to adduce evidence apart from examining himself or filing an affidavit to prove the said factum. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days or examination of a co-worker.

In present case, as per document Exhibit W-1, it is established that workman worked more than 240 days during 1982, 83. There was no cross-examination about working days shown in para-2 of affidavit of workman. Workman has as such discharged his burden that he was continuously working more than 240 days. Services of workman were terminated without notice, retrenchment compensation as not paid. Dispute raised after 13 years itself cannot be a ground for rejecting the claim of workman. Ist party has produced Exhibit W-1 as working days shown in Exhibit W-1 are not challenged as such the record is available about working days of workman. Considering evidence and documents on record, though workman had worked more than 240 days, his services were terminated without notice. Workman was not paid retrenchment compensation, termination of his services of workman is illegal for violation of Section 25-F(a,b) of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

9. Point No.2- In view of my finding in Point No.1 termination of workman is illegal, though workman in statement of claim and his evidence has stated that he was not given benefit of the scheme known as casual labour grant of temporary status and regularization in 1989, claim for regularization as per the scheme is not included in terms of reference. Therefore the Tribunal cannot go beyond the terms of reference. Claim for regularization is not included therefore claim for regularization cannot be allowed. His services of workman were terminated without notice.

Counsel for workman relies on ratio held in case between Water Resources Department versus Manharan reported in 2016-LAB.I.C.4522. Their Lordship upheld award for reinstatement passed by Labour Court upholding findings of Labour Court that workman worked for 258 days.

In present case, contentions of management as claimed that expansion of telecom scheme was closed in 1990 has not been challenged therefore reinstatement of workman is not possible. Considering the Ist party workman was working with the 2nd party from 1981 to 1984, relief of reinstatement would not be justified, compensation Rs. One Lakh would be appropriate in the case. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management of the Sub-Divisional Officer (Telegraph) BSNL, Raigarh in terminating the services of their workman Shri Akhilesh Kumar Mishra w.e.f. December 1985 is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1602.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स कॉम्पैक्ट सिक्योरिटी सर्विस, बैरागढ़, भोपाल एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (केस सं. सीजीआईटी/एलसी/आर/24/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-42011/20/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1602.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R/24/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the M/s. Compact Security Service, Bairagarh, Bhopal and their workman, which was received by the Central Government on 08.06.2017.

[No. L-42011/20/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/24/2014

PRESIDING OFFICER : SHRI R. B. PATLE

Branch Secretary,
MP Sarva Shaskiya Karmkar Mahasangh,
C/o Shri Anoop Choudhary, Neelknth Colony,
Ichhavar Road, Near RAK College,
Sehore (MP)

...Workman/Union

Versus

M/s. Compact Security Service,
Krishna Plaza, 3rd Floor,
Main Road, Bairagarh,
Bhopal

...Management

AWARD

Passed on this 10th day of April, 2017

1. As per letter dated 20-3-2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-42011/20/2014-IR(DU). The dispute under reference relates to:

“Whether the instruction vide their Standing Order No. 1682 dated 13-7-09 of Khadi & Village Industries Commission regarding allowing the workman to change a person (Contract Labour) once in 6 months is justified? If not, to what relief Shri Ramesh Gupta, Shri Rakesh Malviya, Shri Shankarlal, Shri Ajay Malviya and Shri Rajpal Malviya are entitled for?”

2. Even after issuing notices dated 11-4-14, 1-1-15 & 21-11-16, the Union didnot participate in the proceeding, no statement of claim is filed. Ist party is proceeded exparte on 6-1-17.

3. Ist party management also not filed Written Statement. From conduct of the parties, it is clear that the parties are not pursuing or participating in the dispute.
4. In the result, award is passed as under:-
“Reference is disposed off as No Dispute Award.”
5. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1603.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडेंट, इन्फैक्ट्री स्कूल, महू एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (केस सं. सीजीआईटी/एलसी/आर/87/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-14011/3/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1603.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R/87/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Commandant, Infantry School, Mhow and their workman, which was received by the Central Government on 08.06.2017.

[No. L-14011/3/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/87/2011

General Secretary,
Suraksha Asainik Karmchari Sangh,
Garden No.19, Peat Road,
Mhow

...Workman/Union

Versus

The Commandant,
Infantry School,
Mhow

...Management

AWARD

Passed on this 12th day of April, 2017

1. As per letter dated 19-9-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14011/3/2011-IR(DU) The dispute under reference relates to:

“Whether the action of the management of Commandant, Infantry School, Mhow in terminating the services of Tailor Shri Venu Gopalan by oral order after his 6 years continuous service is legal and justified? What relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of Ist party workman is that he was appointed as teller on 14-7-00 in pay scale Rs.2610-60.... The entry of workman was in regular service. That workman was allowed higher pay scale which was published by Infantry School, Mhow MP on 20-4-04. That he rendered continuous service for 6 years. His services were orally terminated in March 2006. That he had completed more than 240 days continuous service during each of the year . workman further submits he was selected for post of Teller after passing trade test and personal interview. That his services are illegally

terminated in violation of provisions of ID Act. He is still unemployed. On such ground, workman prays for his reinstatement with consequential benefits.

3. 2nd party management is proceeded exparte. Case was repeatedly fixed for exparte evidence of workman. Workman failed to adduce evidence in support of his claim. For above reasons, dispute under reference could not be decided on merit.

4. In the result, No Dispute Award is passed.

5. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1604.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार विभाग, भोपाल एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (केस सं. सीजीआईटी/एलसी/आर/267/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-40012/63/99-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1604.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R/267/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Department of Telecommunication, Bhopal and their workman, which was received by the Central Government on 08.06.2017.

[No. L-40012/63/99-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/267/99

Shri Abdul Nisar,
S/o Abdul Gaffar,
Durga Nagar,
Behind Tiger Poltry Farm,
Vidisha (MP)

...Workman

Versus

Chief General Manager,
Deptt. Of Telecommunication,
Hoshangabad Road,
MP Circle,
Bhopal (MP)

...Management

AWARD

Passed on this 12th day of April 2017

1. As per letter dated 30-7-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/63/99/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom, MP Circle Bhopal in terminating the services of Shri Abdul Nisar S/o Shri Abdul Gaffar without any notice, enquiry or disciplinary proceedings after employing him is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/3. Case of workman is that he was working as daily wage driver against leave vacancy w.e.f. 987. He was posted in circle office, Bhopal. He was asked to served in various branch offices. He worked as Driver. He was getting pay and allowances. Despite several applications and 2 interview calls given to him, interviews were cancelled without assigning reasons. That he continuously worked from 1987 to 15-12-97. He was told that at present, budget doesnot permit his continuation in driver, he should come after six months. Workman further submits that after period of six months, when he appeared in the office, application was taken from him for appointment and asked to wait for interview call. He not received call, any reply was not given to him. It is submitted that he was in service of 2nd party from 1987 to December 1997. His services were discontinued without notice. He was engaged in leave vacancy and rendered 12 year service. That there are many vacant post in the circle office but workman was not continued. Act of management is malafide. His services are wrongfully terminated. On such ground, workman prays for his reinstatement with full backwages.

3. 2nd party filed Written Statement at Page 7/1 to 7/3 opposing claim of workman. 2nd party reiterates that workman was never given appointment on post of Driver. The recruitment on post of Driver is made following recruitment rules. The driver cannot be appointed without completing departmental requirements. That claim of Ist party is without substance. Workman has not produced appointment order as driver. He was not appointed by department. The contentions of workman that he was told budget doesnot permit him continuous on post of driver is baseless. As workman was not appointed, there is no question issuing notice for termination of his service. It is denied that management has malafidely terminated his service. 2nd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Telecom, MP Circle Bhopal in terminating the services of Shri Abdul Nisar S/o Shri Abdul Gaffar without any notice, enquiry or disciplinary proceedings after employing him is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

5. The term of reference pertains to legality of termination of services of workman. Management has denied appointment of Ist party. Workman filed affidavit supporting his contentions in statement of claim. He claimed that he worked for 12 years. That he referred more than 240 days wages and entitled for regularization. Workman remained absent for his cross examination, his evidence cannot be considered.

6. Management was granted several adjournments but no evidence is adduced by management. Evidence of management was closed on 9-9-16. Learned counsel for Ist party Shri Soni relies on ratio held in case between Tapash Kumar Paul versus BSNL.

7. Ist party workman has produced certain documents along with list but he failed to participate in reference proceeding and lead evidence in proof of the documents. As evidence of workman cannot be considered, workman has failed to establish termination of his service is illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom, MP Circle Bhopal in terminating the services of Shri Abdul Nisar S/o Shri Abdul Gaffar without any notice, enquiry or disciplinary proceedings after employing him is legal and proper.
- (2) Workman is not entitled to any relief.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1605.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वरिष्ठ महाप्रबंधक, आयुध कारखाना, खमरिया, जबलपुर एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (केस सं. सीजीआईटी/एलसी/आर/80/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-14011/27/2009-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1605.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R/80/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Senior General Manager, Ordnance Factory, Khamaria, Jabalpur and their workman, which was received by the Central Government on 08.06.2017.

[No. L-14011/27/2009-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/80/2009**

President,
SC/ST Defence Karmachari Sangh,
Aayudh Nirmani,
Khamaria, Jabalpur

...Workman/Union

Versus

Sr.General Manager,
Ordnance Factory,
Khamaria, Jabalpur

...Management

AWARDPassed on this 7th day of April 2017

1. As per letter dated 30-9-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14011/27/2009-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Ordnance Factory Khamaria Jabalpur in deducting pay of Shri Narender Kumar, OFK T.No.EE/85/64987 for 24-5-06 (one day) is legal and justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of workman is that he is working as Electrician Highly skilled in Ordnance Factory, Khamaria, Jabalpur holding T.No.EE/85/64987. As per prevalent rules of establishment of 2nd party, working hours of employees are 7.30 AM to 5 PM- morning shift, 8.30 PM to 5.30 AM- night shift as per circular dated 16-5-06. That from 26-3-06, 2nd party introduced electronic punching method issuing smart card to all its employees including workman. It was directed from 26-3-06, muster rolls would be prepared according to Electronic punching method as per circular dated 25-3-06. Workman submits on 24-5-06, he entered premises of 2nd party, duly punched his card E/85 in EDK Gate and in Pariyat bhawan of the factory in morning as well as in the evening. That along with him, co-employees having token No. E-32, E-86, E-217 also marked their presence by punching their cards. That as per rules of OFK, workman marked his presence in logbook on 24-5-06 in EDK Section for electric repairing of Truck No. MP-20-A-2818. He marked his signature on log book. despite he was present in duty hours on 24-5-06, 2nd party illegally deducted wages for that day without any notice or reasons.

3. Ist party further submits that management displayed on notice dated 27-5-06 informing that the action of the workman using his smart card for punching at Pariyat gate instead of EDK Gate was unwarranted. Workman was

advised for amendment in smart card submitting to EE Smart Card Incharge. That co-workers present with him on 24-5-06 lodged complaint along with workman. It is submitted that the action of management deducting one day wages of workman alleging his absence from duty is illegal. He submitted representation dated 22-10-06. That his service were illegally deducted. He also submitted representation on 17-5-07 for review of order of deduction of wages for absence from duty on 24-5-06. That 2nd party issued show cause notice dated 9-5-06 to him after lapse of 2 years regarding his absence on 24-5-06. That the management had kept silence did not provide copies of entries on his request. Workman reiterates that he had rendered service on 24-5-06 is in his punching card at EDK gate and Pariyat Bhawan of the factory. He submits that the deduction of wages for absence on 24-5-06 be quashed and 2nd party be directed to pay with held.

4. 2nd party management filed Written Statement opposing claim of workman. As per 2nd party workman Narendra Kumar was working as Electrician Highly skilled T.No. E-84/64987. Management introduced mustering procedure, attendance in the Ordnance Factory. The process of introduction of Electronic attendance system was introduced. Management received complaints against workman Narendra Kumar from R.P.Kasera, Pandey alleging that the workman committed had talked indiscipline with Sr. Co-worker. Workman has put them to harassment making false complaint and threatening to make false complaint against them in the SC ST council etc. That on 24-5-06, workman had not come to day at EDK Gate at 7.30 hours. He had come to duty around 11.30 hours Shri D.K.Pandey Incharge instructed workman not to take up the work and must go back marking his absence. Workman disobeying his instructions joined duty and went to work in EDK. In order to prove his presence, workman had signed in the complaint and work allotment register. It is not regular practice to sign the unofficial register or complaint book. It is alleged that workman quarreled and misbehaved with Shri R.C.Saxena and Mr. Pandey on the issue of marking his absence in the attendance. That workman unauthorisely decided himself to punch at Pariyat bhawan 1 km distance at EDK Gate. On 26-5-06, due to increase workload, Shri Kasare asked Pandey Sub Incharge to send Bhagwan Singh Electrician, Mohd. for work of Electrical Fitter. Workman stopped them and instigated not to attend the work. On 24-5-06, though workman was marked absent from duty, he went to work in explosive area (EDK) throating the rules, disobeying instructions of the Incharge. Shri Kasare and Pandey were threatened by workman to submit complaint in Harijan Thana & SC ST counsel. It is reiterated that complaint was received from Kasare and Pandey against workman but the matter was inquired by the Works Manager and submitted his confidential reports along with the documents. Workman submitted complaint on 5-9-06. Joint General Manager received complaint for investigation. The investigation revealed that workman himself went to EDK and introduced his name in electric work register. That absence of workman on 24-5-06 was confirmed. the complaint by workman was found incorrect. It is reiterated that on 24-5-06, workman had not attended duty from EDK gate rather he covered to the place of duty at 11.30 hours. For his absence from duty, wages for 24-5-06 were not paid. Action of the management is legal. 2nd party prays for rejection of claim.

5. Ist party workman filed rejoinder reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of Ordnance Factory Khamaria Jabalpur in deducting pay of Shri Narender Kumar , OFK T.No.EE/85/64987 for 24-5-06 (one day) is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. The term of reference pertains to deduction of wages of Narendra Kumar of one day for 24-5-06 is legal. In support of his claim, workman filed affidavit of his evidence. In his affidavit of evidence, workman has stated on 25-3-06, electronic punching method was introduced by management. Smart card was issued to all employees on 24-5-06, he entered premises of respondent and punched smart card in EDK gate and Panchayat bhawan in morning as well as in evening. Other co-workers had also marked presence by punching their respective cards. He marked his presence in log book in EDK Section. Despite his presence inside factory premises on 24-5-06, his wages were illegally deducted without reasons. On 27-5-06, notice was displayed on board advising him to make amendment in smart card. That co-workers who were present with him on 24-5-06 supported him in lodging the complaint. He submitted representation dated 10-6-06, 7-5-07. He had replied to showcause notice dated 17-5-08. Certified copy of punching entries were not

supplied to him. In his cross, workman says he received documents Exhibit W-1 to 5 under RTI Act. The suggestion to the contrary is denied by him. In 2006-07, Bhattacharjee was working as JWM. That he submitted representation Exhibit W-6. He did not receive its reply. He had written letter W-7. He did not get its reply thereafter he raised the dispute. He admits that attendance in Ordnance Factory is marked by Electronic machine. Order is produced at Exhibit M-1. Shri A.K.Pandey and Kasera were senior employees working with him. They were issuing instructions to him. He denies that he threatened them to lodge complaint under rehosities Act. His working hours were 7.30 hours to 5.30 PM. He denies that on 24-5-06, he came to duty place at 11.30 AM. On that day, Pandey was his incharge. He denies that Shri D.K.Pandey told him that he was marked absent and he should return back. The complaint and work register are maintained in the department. Work register is not maintained. Signature of employee making complaint is not competent in the complaint register. He denies that he quarreled with Kasera and Pandey. On 24-5-06, he punched his card at EDK and Pariyat Bhawan. He denies that all employees were required to punch their card at EDK Gate only.

8. Management filed affidavit of witness Shri D.K.Pandey. Pandey has devoted his affidavit about introduction of electronic attendance punching card. That on 24-5-06, workman had not come to duty at EDK at 7.30 hours. That purposely he had posted his name and signature in work allocation register. He had instructed workman not to take work and must go back. Workman disobeyed his instructions and went to work at EDK. That workman had threatened to submit report against him and Kasera. Document Exhibit M-1 to M-7 are admitted in evidence from evidence of those witness. In his cross-examination, management's witness says that enquiry was made w.r.t. entries made in log book. Log book was in his custody. Overwriting in entries in logbook was kept to his notice in noon time. He denies that on 24-5-06, employees could have taken entry from Pariyat gate. He denies that workman had punched his smart card in morning at EDK gate. Management's witness denied that other employees had punched their card at Panchayat were allowed to work. Witness explained employees present at place of working were allowed to work. Management's witness denies that workman had submitted complaint against him and his promotion was cancelled. That General Manager has recorded the statement of Bahadur, Bhagwan Singh, Rajendra. Copies of their statements were not supplied to workman. He claims ignorance about complaint by Suraj Prasad and Bahadur against him. Management's witness in his further cross examination says in case there was mechanical defect, the card could be punched at other gate.

9. Management's witness Rajendra Prasad in his evidence says complaint Exhibit M-2 bears his signature. The contents of his complaint are correct. That workman had not come for work on the day. Mr. Pandey Chargeman told workman about his absence. On that workman said he would complaint against him. Report Exhibit M-2 was sent by him. Workman had not punched his card at EDK Section. The log book in original was brought by him, its copy is marked Exhibit M-2. In his cross, above witness of management claims ignorance about attendance of workman was marked at Pariyat Bhawan and EDK Gate. That record of card punching is not produced in the case. He denies that employee punching his card at EDK can go to Pariyat Bhawan. That after his complaint M-2, his statement was recorded. He was not cross examined by workman.

10. Documents produced by workman Exhibit W-1 pertain to working hours, Exhibit W-2 is office order dated 25-3-06 pertaining to punching method, W-3 is workman and other co-employees Card No. 21,32,85,84, 192, 217 are shown absent, W-4 is copy of discharge, inward register, W-5 is complaint dated 28-8-06 workman has not examined co-employees. W-6 is application dated 17-5, W-7 is letter dated 9-5-08. Those documents donot establish that workman was present on duty on 24-5-06.

11. Documents produced Exhibit M-1 relates to the introduction of electronic attendance issuing master cards etc. In Exhibit M-2(a) workman is marked absent on 24-5-06. Exhibit M-2(b) workman and other co-employees Card No. 21,32,85,84, 192, 217 are shown absent. Exhibit M-3 is complaint submitted on 25-6-06 about marking absence of workman by Shri Pandey and workman threatening him etc. Exhibit M-4,5 is report w.r.t complaint against workman Narendra Kumar that the absence of workman marked on 24-5-06 was correct. Exhibit M-6 is letter dated 18-4-08 relating to confirmation of card punching. Exhibit M-7 is letter dated 24-4-08 w.r.t. that the record of punching cards could not be preserved for 2 years. Exhibit M-2 is report submitted by R.P.Karora w.r.t. absence of workman on 24-5-06. There is absolutely no cross examination w.r.t. above record. During course of argument, Shri Choubey pointed out my attention to signature of Ist party workman appearing on M-2(b). such signature is not appearing on document M-3. Both the documents clearly shows employee T.No.85 was absent. Evidence of workman is clear that sign on complaint book is not obtained. Evidence of management's witness D.K.Pandey and Rajendra Prasad is clear that workman was absent at EDK Gate at 7.30 hours on 24-5-05. Their evidence on above point is not shattered. Evidence of workman is silent why he had punched his card at Pariyat and EDK Gate. If evidence is carefully considered, evidence of both management witnesses is corroborated by documents M-2,3. Workman was absent from duty.

12. Under Section 7(2)(b) & 9 of Payment of Wages Act, the deduction of wages for absence from duty is permissible. As evidence of workman is not convincing he was on duty on 24-5-06, non-payment of wages/ deduction of one day wages is proper and legal. Accordingly I record my finding in Point No.1.

13. In the result, award is passed as under:-

- (1) The action of Ordnance Factory Khamaria Jabalpur in deducting pay of Shri Narendra Kumar , OFK T.No.EE/85/64987 for 24-5-06 (one day) is legal and proper.
- (2) Workman is not entitled to any relief.

14. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1606.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, गन कैरिज फैक्टरी, जबलपुर एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (केस सं. सीजीआईटी/एलसी/आर/53/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-14012/90/99-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1606.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R/53/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Gun Carriage Factory, Jabalpur and their workman, which was received by the Central Government on 08.06.2017.

[No. L-14012/90/99-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/53/2000

Shri Rajaram S/o Amaan,
Hanuman Hotel, Bindo Bai ka bada,
Chotti Khhermai ke pass,
Lalmati, Jabalpur

...Workman

Versus

General Manager,
Gun Carriage Factory,
Jabalpur

...Management

AWARD

Passed on this 3rd day of May 2017

1. As per letter dated 11-2-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14012/90/99/IR(DU). The dispute under reference relates to:

“Whether the action of the management of General Manager, Gun Carriage Factory, Jabalpur in terminating the services of their workman Shri Rajaram S/o Shri Amaan, Ex-labour T.No. 266/IE/90(O) w.e.f. 30-11-96 is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at Page 2/1 to 2/6. Case of workman is that he was appointed as labour on 30-4-74 at GCF Jabalpur. On 30-11-96, he was removed from service. He completed 20 years one month continuous service. He was suspended on 29-3-96. Chargesheet was issued to him on 24-4-96. Charges alleged against him admitting to commit theft of Government property on 27-5-96. Enquiry was held against him. Evidence of 4 management's witnesses was produced. That he had not accepted charges alleged against him. Enquiry Officer and management representative were appointed. He was allowed Defence

Assistant. However without conducting enquiry, Enquiry Officer closed enquiry and submitted his report on 28-9-96. Disciplinary Authority removed him from service on 30-10-96, enquiry was conducted violating principles of natural justice. Order of his removal is illegal. It is reiterated that any of the witnesses shown in the list were not examined. Seizure memo was not proved by the witnesses. Charge against him could not be proved. That stock report of stores was not produced to establish shortage of material. Enquiry is vitiated. That he submitted names of two witnesses Ram Singh Verma and Mr. Tripathi. On 23-9-96, the Defence Assistant was absent. Workman was compelled to accept charges by Enquiry Officer. Once workman had refused to accept charges against him on 9-8-96 it is unreasonable to compel him to admit charges on 23-9-96. Ist party workman reiterates that the order of removal is illegal. Workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 7/1 to 7/3 opposing claim of workman. Management submits that workman was employed as labour and allotted T.No.266/IE 1947 in GCF Jabalpur. On 27-3-96, workman was found attempt to steal 8 pieces of silver weighing 900 grams and 2 pieces of copper weighing 130 grams. On 29-3-96, workman was suspended. Chargesheet under Rule 14 CCS CCA Rules issued to him on 24-4-96. Shri G.Sidaraju was appointed Enquiry Officer. Enquiry was conducted as per rules. Enquiry was adjourned on request of workman on 23-9-96, workman admitted charges. Enquiry was closed. Enquiry Officer submitted his report on 11-10-96 holding charges against workman were proved. Considering report of Enquiry Officer, Ist party workman was awarded punishment of removal on 30-11-96. Appeal preferred by workman was returned to him advising that he should address the appeal properly. Workman did not prefer fresh appeal. That enquiry was adjourned 5 times. Defence Assistant was unable to represent workman. As workman admitted charges, Enquiry Officer submitted his report. Punishment of removal of workman is legal.

4. Ist party workman filed rejoinder at Page 8/1 to 8/2 reiterating his contentions in statement of claim.

5. After evidence adduced by parties, enquiry was found legal vide order dated 10-5-16.

6. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Negative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. As per order dated 10-3-16, enquiry conducted against workman is found proper and legal, question remain for consideration is whether charges alleged against workman are proved from evidence in Enquiry Proceedings. Documents of enquiry are produced at Exhibit M-1 to 12. Record of Enquiry Proceedings Page 16 workman had denied charges against him on 9-8-96. Enquiry was adjourned to 19-8-96, 29-8-96, 23-7-96. Defence Assistant was absent on all the dates. At Page 19 of Enquiry Proceedings dated 23-9-96, again Enquiry Officer explained charges to Ist party workman. The answer of workman is recorded that I now accept the charges levelled against me as per GCF Memo dated 24-4-96 without any external pressure. When already charges were explained to workman on 9-8-96, Enquiry Officer again explaining charges against him when Defence Assistant was absent is absolutely illegal. Recording plea of admission of workman by Enquiry Officer was not justified. Enquiry Officer recorded his finding that charges are proved. Findings of Enquiry Officer based on admission of Ist party workman is illegal. When any evidence of management's witness is not recorded, charges levelled against workman are not proved from evidence. For above reasons, I record my finding in Point No.1 in Negative.

8. Point No.2- Punishment of dismissal/ removal of workman is imposed on the basis of findings submitted by Enquiry Officer. Again recording plea of workman and closing the enquiry without recording evidence is not proper and justified. Therefore punishment of dismissal imposed on the basis of report submitted by Enquiry Officer is illegal. For above reasons, I record my finding in Point No.2 in Negative.

9. Point No.3- In view of my finding in Point No.1 charges alleged against workman are not proved, punishment of dismissal/ removal is illegal. Learned counsel for 2nd party Shri A.K.Shashi submits that management has lost confidence because of the attempt of theft. Learned counsel submits that relief of reinstatement cannot be granted. Shri A.K.Shashi relies on ratio held in case between-

State Bank of India and others versus Ramesh Dinkar Punde reported in 2006(7)SCC-212. Their Lordship dealing with scope of judicial review and scope of interference held if evidence considered by Enquiry Officer, Disciplinary Authority and Appellate Authority- reappreciation of such evidence is impermissible.

Ratio held in the case cannot be applied to case at hand as Enquiry Officer did not record evidence of any witnesses of the management. Workman had already denied charges against him. Again recording plea of admission by management is illegal. Considering factual matrix, punishment of dismissal deserves to be quashed and instead of reinstatement, compensation Rs.2,50,000 deserves to be awarded to meet the ends of justice, accordingly I record my finding in Point No.3.

10. In the result, award is passed as under:-

- (1) The action of General Manager, Gun Carriage Factory, Jabalpur in terminating the services of their workman Shri Rajaram S/o Shri Amaan, Ex-labour T.No. 266/IE/90(O) w.e.f. 30-11-96 is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs.2,50,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1607.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक (एचआर), न्यूक्लियर पावर कॉरपोरेशन ऑफ इंडिया लिमिटेड, मुंबई व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (आईडी सीजीआईटीए सं. 49/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.04.2017 को प्राप्त हुआ था।

[सं. एल-42011/143/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1607.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID CGITA No. 49/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Director (HR), Nuclear Power Corporation of India Limited, Mumbai & Others and their workman, which was received by the Central Government on 26.04.2017.

[No. L-42011/143/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 20th April, 2017

Reference: (CGITA) No. 49/2012

1. The Director (HR),
Nuclear Power Corporation of India Limited,
Anushakti Nagar, Mumbai
2. The Station Director,
Kakrapar Atomic Power Station,
PO Anumala, Tal. Vyara,
Tapi – 394651

...First Party

V/s

The General Secretary,
KakraparAnumathak Karmachari Sangathan,
KAPP Township, Anumala,
Tapi – 394651

...Second Party

For the First Party : Shri K.V. Gadhia Associates

For the Second Party : Shri H.D. Kathrotiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42011/143/2011-IR(DU) dated 15.02.2012 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the union to eradicate the anomaly between the Non-Technical Staff and Technical Staff of NPCIL which caused due to the recommendations of 6th Central Pay Commission is legal, proper and just? What relief the technical staff is entitled to?”

1. The reference dates back to 15.02.2012. In response to the notices issued to the parties, the second party the General Secretary, KakraparAnumathakKarmachariSangathan submitted the statement of claim Ex. 7 on 08.01.2014 alleging that the first party Nuclear Power Corporation of India Limited is the government organisation engaged in construction, development and maintenance of Nuclear Power Plant. There are so many employees therein and the second party union is registered under the Bombay Trade Union Act and affiliated to INTUC which is a recognised union of the first party to which majority of the employees are its registered members. The technical staff of the first party dedicates most important role in generating power which is called the core group of the organisation. They participate in achieving the targets and goals set by the first party from time to time. The first party has already implemented the revised pay scale and grade pay as per the 6th Central Pay Commission Pay Structure for all the employees of Kakrapar Atomic Power Station. It is further alleged that earlier non-technical staff grade pay was equivalent to the technical staff but after revision, the technical staff grade pay remains unchanged and the grade pay of non-technical staff was upgraded one step higher to technical core group staff causing to the dis-satisfaction among the technical staff who are the core group employees.

2. It is further alleged that non-executive personnel consequent upon the implementation of the 6th Central Pay Commission Pay Structure were in the pre-revised scale of Rs. 5000-150-8000, Rs. 5500-175-9000, Rs. 6500-200-10500 and Rs. 7450-225-11500 and technical employees were in the pre-revised pay scale of Rs. 5000-150-8000, Rs. 5500-175-9000, Rs. 6500-200-10500 and Rs. 7450-225-11500 but the grade pay of technical and non-technical staff was changed as stated above in the manner reproduced in the table below:

Pre-revised 5 th CPC scale	Designation/Grade		Upgraded 6 th CPC Grade Pay By NPCIL	
	Technical Employees like	Non-technical Employees like	For Technical Employees	For Non-Technical Employees
5000-150-8000	SA/A, DM/A and Tech/E	Steno Gr.-2, Assistant Gr.-2, ASO – Gr. 1	4200	4200
5500-175-9000	SA/B, AFM/DM/B and Tech/F	ASO Gr.-3, PA, AG-3	4200	4600
6500-200-10500	SA/C, FM/A, DM/C and Tech/G	ASO Gr. -3, PS, Sr. AG -1	4600	4800

Thus both categories of technical SA/B, AFM, DM/B, and Tech/F, V/s Non-Technical ASO Grade 2, PA AG – 3 were having same pre-revised 5th CPC pay scale of Rs. 5500-175-9000 but having different 6th CPC grade pay of 4200 and 4600 while technical personnel are having inferior grade pay of Rs. 4200 and non-technical personnel are given superior Grade Pay of Rs. 4600.

Technical staff likes SA/C, FM/A, DM/C and Tech/G where as non-technical staff likes also Grade-3, PS, Sr. AG-1 having same pay scale of Rs. 6500-200-10500 (pre-revised) but having different 6th CPC grade pay of Rs. 4600 and 4800. Technical personnel having inferior grade pay of Rs. 4600 whereas non-technical personnel are given superior grade pay of Rs. 4800.

Thus the second party has prayed for passing an order to the first party to grant the same 6th CPC grade pay to all the employees who are having same 5th CPC pre-revised scale of pay i.e. Rs. 5000-150-8000, Rs. 5500-175-9000, Rs. 6500-200-10500 and Rs. 7450-225-11500 and any other relief as the tribunal deems fit in favour of the second party.

3. The first party in his written statement Ex. 8 admitted all the facts of the statement of claim and explained as to why the second party workman were not given the parity in respect of the grade pay with the non-technical employees of the corporation. To explain the facts, it is submitted that the parliament enacted the Atomic Energy Act, 1962 repealing the earlier Atomic Energy Act, 1948 vesting with the exclusive powers to produce, develop, use and dispose of Atomic Energy for production and supply of electricity. In its wisdom through a policy decision, the central government decided to carry out the generation of electricity to a government company, therefore, the Nuclear Power Corporation of India Limited (NPCIL), hereinafter referred to as NPCIL was incorporated in the year 1987 under the company act, 1956 as a “Government Company” wholly owned by the Central Government under the administrative control of Department of Atomic Energy, Government of India. Consequent upon the incorporation of NPCIL, all the employees of the Nuclear Power Board, a consequent of Department of Atomic Energy were transferred en-masse deputation basis to the NPCIL without deputation allowance with effect from 17.09.1987 vide DAE O.M. No. 8/3 (1) 86 – PP iii dated 04.09.1987 with a condition that the employees will have an option to be permanently absorbed in NPCIL. NPCIL, after it incorporation was to finalise the service conditions of its employees with in a period of 12 months from the date of the aforesaid office memorandum. It is further submitted that as per the policy directives and guidelines issued by the Department of Atomic Energy, Government of India, scientific and technical employees shall continue to be governed by the merit promotion scheme (without linkage to vacancies) of Department of Atomic Energy. While the administrative personnel (HR Finance, Contract and Materials Management) and auxiliary cadres shall be governed by NPCIL promotion rules and orders issued from time to time. The absorption terms also included introduction of promotion by upgradation to two levels in Group C and D with linkage to any vacancies. The upgradation shall be on the basis of 5 years qualifying service in the immediate lower grade, written examination, acceptable C R Grading and personal interview. Thus accordingly, a career progression policy was finalised for non-technical category with the approval of board of directors as follows:

Level	Designation	Pay Scale (4 th CPC)	Qualifying Service	Basis
Level – 1	Jr. Assistant – 1	950-1500	5 years	Recruitment Level
Level – 2	Jr. Assistant – 2	1200-2040	5 years	Upgradation
Level – 3	Sr. Assistant – 1	1400-2300	5 years	Upgradation
Level – 4	Sr. Assistant – 2	1640-2900	5 years	Vacancy Based

4. Thus there was no linkage in promotion pattern of technical and non-technical staff from the beginning of the formation of the corporation and even during the period under Department of Atomic Energy. In addition, the above non-technical promotion scheme provides only two level upgradation and the next level on the availability of vacancies. It is further submitted that to provide improved levels for upgradation and career progression in non-technical and non-executive categories of employees, the scheme was reviewed by a committee which felt that minimum four upgradation/promotion be provided for these categories of employees recommending that initial induction level may be raised from Jr. Assistant – 1 to Jr. Assistant – 2 (now re-designated as Assistant Gr. - 1) with educational qualification of Graduation of Arts/Science/Commerce with minimum 50% marks plus minimum 6 month certificate course in Computer Application, in view of the changing job requirement. Accordingly, the recommendations of the committee were approved by the Board of Directors and the following scheme was made effective w.e.f. 1st of April, 2006.

Level	Designation	Pay Scale (5 th CPC)	Qualifying Service	Basis
Level – 1	Assistant Gr. – 1	4000-6000	5 years	Recruitment Level
Level – 2	Assistant Gr. – 2	5000-8000	5 years	Upgradation
Level – 3	Assistant Gr. – 3	5500-9000	5 years	Upgradation
Level – 4	Sr. Assistant Gr. - 1	6500-10500	5 years	Vacancy Based
Level – 5	Sr. Assistant Gr. - 2	7500-12000	5 years	Vacancy Based

5. It is further submitted that on the basis of the revised promotion policy, the promotions for non-technical category were effected w.e.f. 01.04.2006, 01.04.2007 and 01.04.2008 which were notified in September, 2008 by the Government of India in accordance with the revised scales of pay as per 6th CPC recommendations. The pay commission recommendations accepted by the Government of India as well as by Department of Atomic Energy were adopted by the NPCIL resulting into merger of three of the above levels viz. Level 2, Level 3 and Level 4 and into one pay band (PB -2) with same grade pay of Rs. 4200/-. Thus above development affected the whole career progression scheme of non-technical non-executive categories of employees (which was made in 2006) and the number of promotional levels got reduced to 2 from the earlier 4. This necessitated further review of the career progression policy of this category of employees afresh in the context of revised pay structure and also on the basis of cadre review took place at DAE.

6. It is further submitted that a committee was constituted to review the promotion policy existing in NPCIL in case of non-technical non-executive cadre. The joint consultative council (JCC) members were also allowed to make a presentation before the committee. The JCC consists of members of the unions including recognized union of KAPS. The committee after going through the cadre review of DAE and scales/grade pay allowed to the staff working at DAE Secretariat submitted its recommendations. In order to maintain the levels of promotions as agreed to earlier, the following was recommended by the committee, which was accepted and implemented in NPCIL for non-technical non-executive categories of employees.

Level	Designation	Pay Scale (6 th CPC)	Qualifying Service	Basis
Level – 1	Assistant Gr. – 1	PB-1+2400	5 years	Recruitment Level
Level – 2	Assistant Gr. – 2	PB-2+4200	5 years	Upgradation
Level – 3	Assistant Gr. – 3	PB-2+4600	5 years	Upgradation
Level – 4	Sr. Assistant Gr. - 1	PB-2+4800	5 years	Vacancy Based
Level – 5	Sr. Assistant Gr. - 2	PB-2+5400	5 years	Vacancy Based

7. It is further submitted that the recruitment level, number of levels of promotion, promotion policy and the promotion norms (i.e. qualifying service, CR grading) in respect of technical categories of employees and non-technical categories of employees have always been different. For technical employees, it is not linked to vacancies at all whereas in the case of “non-technical non-executive category” of employees, it is by upgradation in the first two levels of promotions and vacancy based in the next two levels. Hence, there is no comparison possible as the basic criterion, categories and cadres are different.

8. It is further submitted that as per the terms of the service conditions as offered and agreed upon at the time of absorption of NPCIL, technical categories of employees of NPCIL are governed by the Department of Atomic Energy’s merit promotion scheme, whereas non-technical employees of NPCIL are governed by NPCIL promotion scheme which is reviewed by NPCIL from time to time. Further the qualification of induction level for Assistant Grade – 1 is far superior to the induction level of Technician B. While the basic qualification requirement for Assistant

Grade – 1 is graduation in Arts/Science/Commerce with minimum 50% marks plus minimum 6 months Computer Application course, whereas for technician B, the qualification requirement is HSC with Maths and Science or SSC + ITI. The Department of Atomic Energy also reviewed merit promotion policy subsequent to 6th CPC and a comparative statement indicating present promotion policy of technical categories of employees and non-technical employees in NPCIL.

9. It is further submitted that the first party has pioneered in successfully running 7 operating Nuclear Power Stations across the country and each one of the station has a registered trade union consisting of its employees as members and till so far, none of the members at these stations have ever raised any such issues as they were fully aware about the absorption conditions and the promotion policy of technical and non-technical employees in NPCIL. The second party without understanding the promotion policy for technical and non-technical employees, difference of policy and the absorption conditions as mentioned above has raised the present dispute, which needs to be rejected. Thus the first party on the aforesaid ground has justified the denial of parity to the technical staff with the non-technical staff.

10. The second party submitted the rejoinder Ex. 9 to the written statement of the first party explaining that NPCIL has accepted and implemented the Central Government Pay Scale or it's all the employees including non-technical category which is self-explanatory in annexure 1 and 2 annexed with the written statement wherein no distinction has been made for the category of non-technical employees. Non-technical employees of the NPCIL have been granted next higher grade pay which is denied to the technical employees. It is wrong to say that the promissory e-stopples apply in the case. Promotion pattern of technical and non-technical staff have nothing to the dispute involved in the reference. All the averments and submissions of the first party are irrelevant and baseless and also not connected with the dispute in any manner.

11. Promotion pattern of technical and non-technical staff has nothing to do with the dispute involved in the present dispute. 6th CPC recommendation and career progression are different issues and have no relevance. Their demand is to grant same grade pay to technical employees also which are already accepted by NPCIL i.e. from Rs. 4200 to Rs. 4600, Rs. 4600 to Rs. 4800 and Rs. 4800 to Rs. 5400 for pre-revised scale of Rs. 5500-175-9000 (S-10), Rs. 6500-200-10500 (S-12) and Rs. 7500-250-12000 (S-14) respectively and to remove disparity in implementation of grade pay recommended by 6th CPC for pre-revised scale of Rs. 5500-175-9000 (S-10), Rs. 6500-200-10500 (S-12) and Rs. 7500-250-12000 (S-14) for all the employees of first party. It is true that after implementation of 6th pay commission recommendations accepted by the Government of India and as adopted by Department of Atomic Energy (DAE) and NPCIL resulted in merger of 3 scales of Rs. 5000-150-8000 (S-9), Rs. 5500-175-9000 (S-10), Rs. 6500-200-10500 (S-12). But after implementation of Part B of the 6th CPC only two scales are merged in one scale i.e. of Rs. 5000-150-8000 (S-9), Rs. 5500-175-9000 (S-10). This resulted for both the categories of employees i.e. technical as well as non-technical categories of employees and reduced the promotional level of technical category employees also. The same issue is clarifying by way of notification of NPCIL which is already annexed as Annexure A and Annexure B.

12. On the basis of the pleadings, following issues are to be addressed by way of the award:

Issue No. i: Whether the demand of the union to eradicate the anomaly between the Non-Technical Staff and Technical Staff of NPCIL which caused due to the recommendations of 6th Central Pay Commission is legal, proper and just?

Issue No.ii: To what relief, if any, the technical staff is entitled?"

13. Both the parties did not prefer to lead oral evidence and relied on the letter dated 18.09.2008 of NPCIL regarding revised pay structure for the post operated in NPCIL (Annexure A) and letter dated 01.12.2008 of NPCIL regarding Part B revision of pay structure in NPCIL in respect of certain categories of employees (Annexure B).

14. The dispute revolved around Para 3, 4, 5 and 6 of the statement of claim Ex. 7 which are reproduced as under:

- i. The second party submitted that NPCIL has already implemented the revised pay scale and grade pay for all the employees of KAPS i.e. Non-technical, non-executive personnel consequent upon implementation of 6th CPC pay structure who are in the pre-revised scale of Rs. 5000-150-8000, Rs. 5500-175-9000, Rs. 6500-200-10500 and Rs. 7450-225-11500.
- ii. The technical employees of KAPS who are in the pre-revised pay scale of Rs. 5000-150-8000, Rs. 5500-175-9000, Rs. 6500-200-10500 and Rs. 7450-225-11500 are being denied the revised grade pay which is given to non-technical non-executive personnel who are in the same pre-revised scale of i.e. Rs. 5000-150-8000, Rs. 5500-175-9000, Rs. 6500-200-10500 and Rs. 7450-225-11500.
- iii. Earlier non-technical staff grade pay was equivalent to the technical staff, now it is regret to inform that technical staff grade pay remains unchanged whereas non-technical staff grade pay is upgraded one step

higher to technical Core Group staff and leading dissatisfaction to the technical staff who are the core group employees.

- iv. Comparison Table of Grade Pay for Technical and Non-technical Staff is given below:

Pre-revised 5 th CPC scale	Designation/Grade		Upgraded 6 th CPC Grade Pay By NPCIL	
	Technical Employees like	Non-technical Employees like	For Technical Employees	For Non-Technical Employees
5000-150-8000	SA/A, DM/A and Tech/E	Steno Gr.-2, Assistant Gr.-2, ASO – Gr. 1	4200	4200
5500-175-9000	SA/B, AFM/DM/B and Tech/F	ASO Gr.-3, PA, AG-3	4200	4600
6500-200-10500	SA/C, FM/A, DM/C and Tech/G	ASO Gr. -3, PS, Sr. AG -1	4600	4800

15. The basic principle of law and natural justice is that if there are two categories of employees in an organisation and these categories of employees are getting the same grade pay and at a later stage, if the grade pay of one of the categories of the employees is enhanced depriving the other category of employee of the parity then the basic principle of justice says that the deprived category of employee should be heard and plausible and cogent reasons must be given for the deprivation of parity. I have gone through both the documents filed by the first party Annexure A and B. These documents do not reveal as to what were the reasons, the non-technical staff was given enhanced grade pay and the technical staff as mentioned in the above table were deprived of the grade pay which is given to the non-technical staff.

16. The advocate for the first party Shri K.V. Gadhia Associates referred Union of India V/s P.V. Hariharan 1997 (0) GLHEL-SC 33097 wherein the Supreme Court has observed that “we have noticed that quite often the tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of “equal pay for equal work” is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the tribunals will exercise due restraint in the matter. **Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims.** These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e. matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a bench comprising at least one Judicial Member. The Chairman of the Central Administrative Tribunal and the Chairmen of the State Administrative Tribunals shall consider issuing appropriate instructions in the matter.” Similar views were expressed in M.C. Dubey V/s Inspector General of Registration 2013 (3) Volume 54 Gujarat Law Reporter A 2013 expressing that such dispute cannot be agitated belatedly.

17. The advocate for the second party union, Shri H.D. Kathrotiya relied on Union of India V/s Anil Kumar 1999 Law Suit (SC) 655 wherein the apex court observed that action of putting Assistant Foreman en-bloc junior to Senior Scientific Assistant without any reason or valid basis was held arbitrary and violative of fundamental rights guaranteeing in equality in service matters.

18. He further referred that R.D. Gupta V/s Lt. Governor Delhi Administration 1987 Law Suit (SC) 603 wherein the Supreme Court has held that granting higher scale of pay to members of the ministerial staff of electricity denying the same to the staff of the other wings is discriminatory and arbitrary. It was also observed that placing of non-technical staff in electricity wing on higher putting and giving them higher pay scale cannot be justified by any stretch of law.

19. In the present case as discussed above, the technical staff has been deprived the higher grade pay vis-à-vis non-technical staff. My general knowledge of science says that the technical staff put always more labour and subject to more risk in their employment. In the present case, the body of these technical staff are subject to serious nuclear radiations causing their life short even then the NPCIL feels the technical staff inferior to the non-technical is disastrous and the approach of the committee, if any, constituted by the NPCIL is laughable. Therefore, the granting of lesser grade pay to the technical staff is arbitrary and discriminatory and same cannot be justified.

20. As the apex court in Union of India V/s P.V. Hariharan 1997 (0) GLHEL-SC 33097 wherein the Supreme Court has observed that unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims. Therefore, in the present case, the committee of the NPCIL in their letter Annexure A and B to the written statement has not given any reasons as to why non-technical staff has been given preference in granting more grade pay vis-à-vis technical staff and as to why and what were the reasons to deprive the technical staff to give the equal grade pay vis-à-vis non-technical staff. Therefore, the action of NPCIL cannot be said equitable, just and reasoned. The action of NPCIL or the committed constituted by it is arbitrary and discriminatory. Thus the demand of the second party union is legal, proper and just with respect to the Issue No. i.

21. **Issue No. ii:** In the light of the aforesaid discussions made in the Issue No. i, I am of the view that technical staff will be given the same grade pay as their counterparts in the non-technical category have been given, within 60 days of publication of the award.

22. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1608.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप मंडल अधिकारी (टेली), बीएसएनएल, डीसा व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (आईडी सीजीआईटीए सं. 554/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.04.2017 को प्राप्त हुआ था।

[सं. एल-40012/253/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1608.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID CGITA No. 554/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Sub Divisional Officer (Tele), BSNL, Deesa & Others and their workman, which was received by the Central Government on 26.04.2017.

[No. L-40012/253/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 17th April, 2017

Reference: (CGITA) No. 554/2004

1. The Sub Divisional Officer (Tele),
BSNL, Deesa Telephone Exchange,
Deesa (B.K.) – 385536
2. The Chief General Manager,
Telecom Deptt., Bharat Sanchar Nigam Ltd., Khanpur,
Ahmedabad (Gujarat) – 380001
3. The General Manager,
Telecom Deptt., Palanpur Telecom District, Joravar Palace,
Palanpur (B.K.) – 385001

...First Party

V/s

The Org. Secretary,
The Association of Railway and Post Employees,
15, Shashi Apartment, Nr. Anjalee Cinema, Vasna Road,
Ahmedabad (Gujarat) – 380007

...Second Party

For the First Party : Shri P.I. Shah

For the Second Party : Shri R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/253/2002-IR(DU) dated 17.04.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Telecom District Manager, Palanpur/SDOT, Deesa, BSNL (Telecom Department) in terminating the services of Shri Rajkumar Omprakash Sharma is legal, proper and justified? If not, to what relief the concern workman is entitled to and since when?”

1. The reference dates back to 17.04.2003. The second party submitted the statement of claim Ex. 6 on 20.09.2005 and the first party submitted the written statement Ex. 7 on 13.03.2007. The second party also submitted the copy of the documents vide list Ex. 8 on 18.03.2010. Since then the second party has not been leading evidence despite giving last opportunity on 15.12.2015. Thereafter, half a dozen dates were given to the second party to lead evidence but the second party failed to lead evidence.
2. Today on 17.04.2017, advocates Shri R.C. Pathak and Chetan Gohel advocates for the second party are present and stated that the second party has not been in their contact, tribunal may pass order as it deem fit.
3. Thus, in the light of the aforesaid circumstances, the reference is finally disposed of in the absence of the second party with the observation as under: “the action of the management of Telecom District Manager, Palanpur/SDOT, Deesa, BSNL (Telecom Department) in terminating the services of Shri Rajkumar Omprakash Sharma is legal, proper and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1609.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप मंडल अधिकारी (टेली), बीएसएनएल, डीसा व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (आईडी सीजीआईटीए सं. 553/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.04.2017 को प्राप्त हुआ था।

[सं. एल-40012/254/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1609.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID CGITA No. 553/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to

the Sub Divisional Officer (Tele), BSNL, Deesa & Others and their workman, which was received by the Central Government on 26.04.2017.

[No. L-40012/254/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 17th April, 2017

Reference: (CGITA) No. 553/2004

1. The Sub Divisional Officer (Tele),
BSNL, Deesa Telephone Exchange,
Deesa (B.K.) – 385536
2. The Chief General Manager,
Telecom Deptt., Bharat Sanchar Nigam Ltd., Khanpur,
Ahmedabad (Gujarat) – 380001
3. The General Manager,
Telecom Deptt., Palanpur Telecom District, Joravar Palace,
Palanpur (B.K.) – 385001

...First Party

V/s

The Org. Secretary,
The Association of Railway and Post Employees,
15, Shashi Apartment, Nr. Anjalee Cinema, Vasna Road,
Ahmedabad (Gujarat) – 380007

...Second Party

For the First Party : Shri P.I. Shah

For the Second Party : Shri R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/254/2002-IR(DU) dated 17.04.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Telecom District Manager, Palanpur/SDOT, Deesa, BSNL (Telecom Department) in terminating the services of Shri Laxmanbhai Rangnathbhai Katal is legal, proper and justified? If not, to what relief the concern workman is entitled to and since when?”

1. The reference dates back to 17.04.2003. The second party submitted the statement of claim Ex. 6 on 20.09.2005 and the first party submitted the written statement Ex. 7 on 13.03.2007. The second party also submitted the copy of the documents vide list Ex. 12 on 18.03.2010. Since then the second party has not been leading evidence despite giving last opportunity on 15.12.2015. Thereafter, half a dozen dates were given to the second party to lead evidence though he submitted his affidavit Ex. 11 but the second party failed to appear for cross-examination.
2. Today on 17.04.2017, Shri R.C. Pathak and Chetan Gohel Advocates for the second party are present and stated that the second party has not been in their contact, tribunal may pass order as it deem fit.
3. Thus, in the light of the aforesaid circumstances, the reference is finally disposed of in the absence of the second party with the observation as under: “the action of the management of Telecom District Manager, Palanpur/SDOT, Deesa, BSNL (Telecom Department) in terminating the services of Shri Laxmanbhai Rangnathbhai Katal is legal, proper and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1610.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पोस्ट ऑफिस के अधीक्षक, पोस्ट विभाग, जुनागढ़, गुजरात व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (आईडी सीजीआईटीए सं. 356/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.04.2017 को प्राप्त हुआ था।

[सं. एल-40012/2/99-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1610.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID CGITA No. 356/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Superintendent of Post Offices, Department of Post, Junagarh, Gujarat & Others and their workman, which was received by the Central Government on 26.04.2017.

[No. L-40012/2/99-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 17th April, 2017

Reference: (CGITA) No. 356/2004

1. The Supdt. Of Post Offices,
Deptt. of Post, Divisional Post Office, Gandhigram,
Junagadh (Gujarat) – 362001
2. The Branch Post Master,
Department of Post, Bhanduri (Maliya Hatina),
Junagadh (Gujarat) – 362001

...First Party

V/s

Shri Butani Kantilal Bhavanbhai
C/o Shri A.H. Dhamani,
Amar Villa, Dhal Road,
Junagadh (Gujarat) – 362001

...Second Party

For the First Party : Shri P.M. Rami
For the Second Party : Shri R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/2/99-IR(DU) dated 28.11.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Sr. Supdt. of Post Offices, Divisional Post Office, Junagadh/ Branch Post Master, Bhanduri (Maliya Hatina) in terminating the services of Shri Butani Kantilal Bhovanbhai w.e.f. 09.12.1996 is legal and justified? If not, to what relief the workman is entitled?”

1. The reference dates back to 28.11.2000. The second party submitted the statement of claim Ex. 4 on 17.04.2001 and the first party submitted the written statement Ex. 8 on 20.09.2001. Since then the second party has been absent and has also failed to lead evidence. Therefore, on 31.03.2011, a notice was issued to the second party to appear and lead evidence on 02.05.2011. But since then the second party has been absent. First party vide his letter Ex. 15,16,17,18 and 19 requested to dismiss the reference. On 15.12.2015, the second party advocate was present and requested for time. He was given last opportunity to lead evidence on that date but even thereafter giving date on 18.04.2016, 17.08.2016, 14.12.2016, 14.02.2017 and today on 17.04.2017, he also failed to get the appearance of the second party for leading evidence.

2. Therefore, this tribunal has no alternative but to dispose of the reference in the absence of the evidence of the second party with the observation as under: “the action of the management of Sr. Supdt. of Post Offices, Divisional Post Office, Junagadh/ Branch Post Master, Bhanduri (Maliya Hatina) in terminating the services of Shri Butani Kantilal Bhovanbhai w.e.f. 09.12.1996 is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 29 जून, 2017

का.आ. 1611.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, गन कैरिज फैक्टरी, जबलपुर एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (केस सं. सीजीआईटी/एलसी/आर/31/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-14011/44/2000-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 29th June, 2017

S.O. 1611.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Case No. CGIT/LC/R/31/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Gun Carriage Factory, Jabalpur and their workman, which was received by the Central Government on 08.06.2017.

[No. L-14011/44/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/31/2001

Shri G.Venkateshan,
C/o General Secretary,
GCF Mazdoor Sangh, Balkrishna Bhawan,
East Ghamapur, Jabalpur

...Workman/Union

Versus

General Manager,
Gun Carriage Factory,
Jabalpur

...Management

AWARD

Passed on this 11th day of May, 2017

1. As per letter dated 18-1-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-14011/44/2000/IR(DU). The dispute under reference relates to:

“Whether the demand of the GCF Mazdoor Sangh from the management of Gun Carriage Factory, Jabalpur for payment of OTA to Darbans (as per list attached) from the date of their appointment upto 29-8-99 for duty performed during lunch hour that is duty performed in excess of 48 hours per week is just and proper? If so, to what relief are the workmen entitled and at what rate?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through General Secretary at Page 13 to 17. Case of Union is that the dispute is raised pertaining to R.K.Singh ad 136 others shown in the list enclosed with order of reference in representative capacity for redressal of their grievances. That the workman connected with dispute were working as Darban on date of initial appointment shown in the list attached with the reference order. that workmen were required to work 9 hours per day without lunch break. From the date of their initial appointment, workman used to work 48 hours in a week. Period of lunch break was not available to darbans working in 2nd party factory. Other employees working in the 2nd party engaged in different work were given one hour lunch break. They were required to perform 8 hour duty per week whereas the workman were required to perform 54 hours duty in a week, they were paid salary for 54 hours in a week as they worked. Workman submitted representations in the matter of less payment of salary, payment of overtime allowance for the extra work performed during lunch hour. 2nd party management realized their mistake and working period of workman were reduced to 8.30 hours per day from 28-8-99. However workman were not paid overtime allowance for the period he had already performed during lunch hour since their initial appointment. Employees were exploited by management of 2nd party extracting work till lunch hour. Ist party claims wages for extra duty hours during lunch period from initial appointment till 29-8-99.

3. It is further submitted that some controversy was raised by darbans working in 2nd party for overtime allowance from 7-8-72 to 31-3-93. The grievances of darban were considered by department and they were paid extra salary for working during lunch hour. That the act of management not paying overtime for additional time is illegal. On such ground, workman prays directions to the 2nd party for paying overtime wages from their initial appointment with 18 % interest.

4. 2nd party filed Written Statement at Page 21 to 22 opposing claim of Ist party. 2nd party submits that the Ist party has not mentioned specific period of time as to when they have been working 54 hours, 51 hours, 48 hours. Etc. Statement of claim of workman is incomplete, ambiguous and vague. Such claim is not tenable. That duty of employee commence from the time he report at working place. Working hours are from the time of reaching work spot. The darbans working in the 2nd party factory were paid overtime under departmental rule for weekly hours for 44.34 to 48 hours and double rate of wages under factory rules of working for 48 hours. The dispute raised must be specific in time which spell they were asked to perform more than prescribed hours without paying overtime. 2nd party denied allegation. It is submitted that averment of Ist party is misleading the claim based by delay and latches as the dispute was raised in 1973. That the claim of Ist party is not specific. Employees were paid overtime at various time as per laws. The claim for recovery of overtime amount with 18 % interest is not tenable. 2nd party prays for rejection of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the demand of the GCF Mazdoor Sangh from the management of Gun Carriage Factory, Jabalpur for payment of OTA to Darbans (as per list attached) from the date of their appointment upto 29-8-99 for duty performed during lunch hour that is duty performed in excess of 48 hours per week is just and proper?	In Negative
(ii) If not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

REASONS

6. The term of reference pertains to demand of GCF Union for overtime allowance to darbans names appearing in the list attached with the order of reference since date of their appointment till 29-8-99. The date of his initial appointment of workman shown in the list ranges from 1971, 76, 77 to 93,94,99 etc. management opposed claim for overtime on the ground that claim is not specific w.r.t. period of overtime working. Management also contented that overtime wages as per provisions of Factory Act were paid for working more than 48 hours in a week.

7. Identical affidavit of evidence of witnesses of Ist party Shri A.R.Tiwari, Rathram, Dixit are filed. Shri Tiwari in his affidavit of evidence says that he was working as Darban from 31-11-77. He knows other persons working as darban. That they were working 9 hours per day. 54 hours in a week. Their working hours were reduced to 8 ½ hours per day, 51 hours in a week. That they were required to work 54 hours a week but wages were paid for 51 hours in 1992. Representation was submitted regarding grievances of darban working in factory claiming additional wages for

six hours. From 29-8-99, working hours of darban are reduced to 8 ½ hours per day. In his cross-examination, Shri Tiwari says his affidavit was prepared by Advocate. He was appointed as darban. Appointment letter was received by him. Working hours are not mentioned in the appointment letter as per law. Labour has to work 8 hours per day. The dispute is raised claiming overtime from 3-11-77 to 29-8-99. The dispute was raised before ALC in Feb 2001. The witness was unable to tell how many hours he worked in November, December 77. Without record, he was unable to tell exact hours of his working. During 1977 to 99, he worked sometimes for 8 hours and some times for 8 ½ hours. The working hours were changing as per the orders. Management did not issue order for overtime working. That general orders were issued. In May 1998, they had raised demand with the management claiming overtime from December 1977. In 1999, overtime was paid to them. He denies that overtime allowance was paid to him for overtime working hours he had worked.

8. Witness Rathram S/o Khappalram filed identical affidavit of his evidence. In his cross, he says he received appointment letter. Conditions of appointment were written. Appointment is not produced. He knows all 137 workers. All workers are working under him. He is working as subedar Darban. Laim under dispute is of the period when he was working as Darban. In his cross, he has given names of 19 employees working as darban with him. He was unable to tell complete name of Tiwari. That Anant Ram was not terminated from service. He is working as security darbar. Witness has denied that A.R.Tiwari was dismissed from service and as per award passed by this Tribunal, he was reinstated. He denied that Anant Ram Tiwari was transferred from VFJ to GCF and retired. Witness claims ignorance whether any matter pertaining to A.R.Tiwari is pending in Court. That Darban are working in 3 shifts. Witness denied that each shift is of 8 hours. When darban in other shift comes for duty, darban from earlier shift are relieved. That darbars are getting benefit of 4 holidays, 8 CL, 31 EL, 20 days Medical Leave. In each of the shift, darbars are required to work half hour overtime but wages are not paid for it.

9. Evidence of affidavit is also filed by Shri Dixit. In his cross-examination, Shri P.K.Dixit says that he filed affidavit on behalf of all the workers/ darban. He doesnot know date of appointment of other darbars. He was appointed under rule of emergency service. Appointment letter was received by him. He did not remember duty hours mentioned in appointment letter. That since 1983 to 99, he worked 9 hours per day. Thereafter overtime work was increasing duty hours were increasing. Separate order for overtime was received. The overtime wages were paid for overtime work. It is not possible for him to tell his working hours during 1983 to 1999.

10. Management filed affidavit of evidence of Shri Sudhir Prasad Works Manager of GCF. That the claim of Ist party is upto 29-8-99. In his affidavit, management's witness says Shri A.R.Tiwari, Rathram and Dixit are not aware of the date of appointment of other persons and unable to tell period of overtime work. That workers were paid overtime for 4 working more than 48 hours. Management's witness in his cross says from 2-5-99, he is posted at GCF that he not seen terms of reference. 137 employees shown in the list, date of their initial appointment was seen by him. Witness corrected that he had not seen date of their initial appointment. The duty hours for a week are decided every year. Witness shown his willingness to show documents pertaining to duty hours for darban that he not seen old records about duty hours. Security Officer was issuing order of duty hours. Document Exhibit W-1 to W-1(h), W-2,3 are admitted in evidence. Though affidavit of Prem Prakash is filed, he has not appeared for cross-examination, his evidence cannot be considered. So far as the documents Exhibit W-1 is duty chart for darban issued for period 5-01-97 to 11-1-97. His duty period is shown 7.15 AM to 16.15 hours, 14.30 to 23.30 hours. In Exhibit W-1(a) duty chart for the period 29-6-97 to 5-7-97 duty hours are shown 7 hours to 15.30 hours, 15 hours to 23.30 hours, 23 to 7.30 hours. 8.30 hours per day. Exhibit W-1(b)(c) duty hours are shown 7.30 hours to 16.30, 14.30 to 23.30, 23 to 8.30 hours. Similar duty hour are shown in Exhibit W-1(d,e,f,g,h) Evidence of witnesses of Ist party is not clear, not cogent and clear that they were required to work during lunch period. In absence of such evidence, claim of Ist party for overtime wages cannot be accepted. Ist party has filed affidavit of only 3 witnesses. It is difficult to believe that remaining darbars were working during lunch period and as such all workers are not entitled for overtime wages claimed by Ist party Union. For above reasons, I record my finding in Point No.1 in Negative.

11. In the result, award is passed as under:-

- (1) The demand of Union for payment of OTA to Darbars (as per list attached) from the date of their appointment upto 29-8-99 for duty performed during lunch hour that is duty performed in excess of 48 hours per week is not proper and legal.
- (2) Workmen are not entitled to any relief.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 जून, 2017

का.आ. 1612.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल इंशोरेंस कॉर्पोरेशन, धनबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 170/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2017 को प्राप्त हुआ था।

[सं. एल-17012/44/1999-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th June, 2017

S.O. 1612.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 170/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of National Insurance Corporation, Dhanbad and their workmen, received by the Central Government on 30.06.2017.

[No. L-17012/44/1999-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/s 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 170/2000

Employers in relation to the management of National Insurance Corporation, Dhanbad

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer**Appearances :**

For the Employers : Shri B.B. Pandey, Advocate

For the workman : None

State : Jharkhand

Industry : Insurance

Dated : 26/04/2017

AWARD

By order No. L-17012/44/1999-IR(B-II) dated 30/05/2000, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of National Corporation Ltd., Dhanbad Division, in not regularizing the employee Shri Tapas kumar Auddy is justified? If not, what are the benefits the concerned workman is entitled to?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 जून, 2017

का.आ. 1613.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 112/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/37/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th June, 2017

S.O. 1613.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 112/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Union Bank of India and their workmen, received by the Central Government on 30.06.2017.

[No. L-12012/37/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 112/2012

Smt. Sangeeta Sachdeva,
W/o Sh. Rajesh Sachdeva
R/o C-82 (IInd Floor),
Hari Nagar, New Delhi

Versus

The Chief Manager,
Union Bank of India,
Naraina Branch,
Delhi - 110028

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No. L-12012/37/2011-IR(B-II) Dated 15.03.2012 referred the following Industrial Dispute to this Tribunal for adjudication:-

“Whether the action of the management of Union Bank of India, New Delhi/Mumbai in dismissing the services of Smt. Sangeeta Sachdeva, Ex-Clerk/Cashier of Union Bank of India, Naraina Branch, New Delhi w.e.f. 17.11.2007 is legal and justified? What relief the workman concerned is entitled to?”

On 23.03.2012 reference was received in this Tribunal. Which was register as I.D. No. 112/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 09.11.2012 claim statement has been filed by workman. Through which workman prayed as follows:-

“It is therefore, most respectfully prayed that this Hon’ble Tribunal/Labour Court may kindly be please to:

- a) Issue notice of the claim to the respondents/Management Bank;
- b) Set aside the enquiry proceedings and the Enquiry Report being in violation of the principles of natural justice;
- c) Quash and set aside the dismissal order dated 17.11.2007 as passed by the management thereby dismissing the workman from her service;
- d) Quash and set aside the Order passed by the Appellate Authority thereby dismissing the appeal of the Appellant;
- e) Hold that the service of the workman were terminated illegally and unjustifiably by the management;

- f) Pass an Award in favour of the workman and against the management thereby reinstating the workman in her service with continuity and all full back wages and other consequential benefits and to answer the reference order accordingly; and
- g) Grant any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case stated above."

Fixed 11.01.2013 for filing of written statement.

Against Claim statement management filed its written statement on 01.05.2013. Where-in management prayed as follows:-

"It is, therefore, most respectfully prayed that the present reference may be answered in favour of the management and the issue with regard to the fairness of the inquiry be decided as preliminary issue and in case the Ld. Court comes to the conclusion that the inquiry against the claimant is vitiated on any ground whatsoever then an opportunity be given to the management to prove the charges against the delinquent employee."

On perusal of the pleadings, followings issues were framed:-

- (1) Whether enquiry conducted by the management was just, fair and proper?
- (2) Whether punishment of dismissal awarded to the claimant commensurate to her misconduct?
- (3) As in terms of reference.

No other issue was made out.

Fixed 19.06.2013 for workman evidence.

On 29.01.2014 workman filed affidavit in his evidence. Case is fixed for 31.03.2014 for tendering of affidavit and cross-examination of workman.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. Hence on 29.03.2017 right of workman evidence was closed. And fixed 09.05.2017 for management evidence.

Management is also remained dormant to file affidavit in its evidence. Hence right of management evidence was also closed then No Dispute Award was reserved on 09.05.2017.

I perused the record which shows that workman in support of his case adduced no evidence. Management also remained dormant to adduce its evidence.

In want of which only "No dispute Award" award can be passed.

Which is accordingly passed.

Dated : 15.05.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 30 जून, 2017

का.आ. 1614.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 20/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/17/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th June, 2017

S.O. 1614.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 30.06.2017.

[No. L-12012/17/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI****I.D. No. 20/2008**

Sh. Anant Vir Jain,
House No. 342, Girdhar Enclave , Near I.M.E College,
G.T. Road,
Sahibabad.

Versus

The General Manager,
Bank of Baroda,
Zonal Office, Northern Zone, 16 Sansad Marg,
New Delhi -110001.

AWARD

The Central Government in the Ministry of Labour vide Letter No.L-12012/17/2008 IR(B-II))dated 12.05.2008 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of Bank of Baroda, through their General Manager, Zonal Office, Northern Zone, 16 Sansad Marg, New Delhi -110001 in removing their workman. Sh. Anant Vir Jain , Ex-Clerk form service with effect from 26.04.2006 is just , fair and legal? If not, to what relief workman is entitled to ?

On 21.05.2008 reference was received in this Tribunal. Which was registered as ID. No. 20/2008 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 31.10.2008 workman filed claim statement before this Tribunal. Where-in he prayed as follows:-

“Therefore most humbly prayed that the Hon’ble Tribunal may graciously be pleased to hold that the action of the management of Bank of Baroda in terminating the workman’s service w.e.f 26.04.2006 is illegal unporper and invalid and consequently pass order directing. The management of the Bank to reinstate the workman with continuity of service and all consequential benefit.

After service of notice management filed written statement on 22.05.2009. Where-in management prayed as follows:-

“It is most respectfully prayed that the Hon’ble Tribunal may kindly be pleased to hold and declare that (1) that the departmental enquiry held by the management was fair and proper and try the same as preliminary issue and in case the Hon’ble Tribunal hold’s otherwise, the management prays for a opportunity to justify the same by adducing additional evidence. (2) that the action of the management in terminating workman’s services is just and lawful and that the workman is not entitled to any relief whatsoever.

Against written statement workman filed rejoinder. Where-in he re-affirmed the contents of claim statement.

On 6.1.2010 following issues are here-by framed:-

1. As per reference.
2. Relief.

Following issue relating to departmental enquiry was framed by Ld. Predecessor on 19.10.2010 and was treated as preliminary issue:-

“Whether the departmental enquiry conducted in this case was legal , just and fair and was not in violation of the principles of natural justice? If not what directions are called for in this case.”

Workman adduced his evidence but none appeared on behalf of management on 26.04.2013 and 3.1.2017 for cross-examination of workman as well as management evidence. On 3.9.2013 cost paid to workman and 23.10.2013 for fixed for cross-examination of workman /management evidence. On 23.10.2013 none for management appeared. Hence right of cross-examination with workman has been closed.

Which was allowed on 11.03.2014 as it was not opposed and order dated 23.10.2013 was set-aside and workman was cross-examined and his cross-examination concluded.

Thereafter evidence of workman has been closed and fixed 21.04.2014 for management /evidence. Affidavit of MW filed on 2.09.2014 Sh. Lalit Kumar, Copy of which supplied to workman. Fixed 27.10.2014 for tendering of affidavit and cross-examination of MW. But 27.10.2014 , 1.12.2014, 9.1.2015, 13.02.2015, 24.3.2015, 1.5.2015 & 13.07.2015 were fixed either on request of both parties or on the request of management. Even then affidavit of MW1 Sh. Lalit Kumar was not tendered by management. So I on 20.08.2015 closed the right of evidence of management and 16.09.2015 for arguments Sh. B. S. Chauhan , Ld. A/R for the management took few adjournment but none turn up to argue the case. Hence on 19.1.2016 I reserved the award with liberty to file written arguments or orally argued by Ld. A/R for the management. Subsequently Ld. A/R's for the parties filed written arguments. On 21.03.2016 I passed detailed order deciding enquiry issue i.e. Preliminary Issue no. 3 in favour of workman and against management. But in the light of settled law of Hon'ble Supreme Court I fixed 31.03.2016 to prove misconduct of workman by management and rebuttal evidence by workman.

On 9.8.2016 management tendered affidavit of MW1 Sh. S.N. Kapoor and his cross-examination was deferred to 28.09.2016 who was cross-examined on 24.10.2016 .

On 24.10.2016 MW1 was cross-examined and his cross-examination was concluded and MW2 tendered its affidavit and his cross-examination is deferred to 10.11.2016.

On 10.11.2016 MW2 Sh. Firoz Sethy , was cross-examined and his cross-examination was concluded.

On 10.11.2016 Ld. A/R for the workman on the instruction of workman refused to adduce evidence of workman in rebuttal.

Hence I fixed 5.12.2016 for arguments.

On 5.12.2016 I was on leave. Hence 15.12.2016 was fixed for arguments. On 15.12.2016 management moved four applications. Copies of which supplied to Ld. A/R for the workman. Objection was invited and put up for disposal on aforesaid applications on 24.01.2017.

On 24.01.2017 reply by workman filed alongwith written submissions.

I orally heard and fixed 31.01.2017 for order.

On 31.01.2017 I passed detailed order rejected application No. 1 , 2 & 4 moved on behalf of management. I disposed of 3rd application moved on behalf of management u/s 151 CPC read with ID Act with prayer to transfer case to some other Tribunal cum Labour court , which I disposed off on the ground that this Tribunal is not empowered in this respect.

Moreover I found management Bank of Baroda defaulter as per provision of Sub Rule (9) of Rule 10-B Industrial Disputes (Central) Rules , 1957 .

However I reserved the award on 31.01.2017 and permitted Ld. A/R for the management Bank Of Baroda to file written arguments in reply of written arguments of workman before passing of award in this old I.D. of 20/2008.

Today, date is 2.05.2017 even then management has not filed its written argument.

Hence I am disposing off this old I.D. Case of 2008.

In the light of contentions of Ld. A/R for workman in his oral arguments and written arguments. I perused the pleadings and evidence of parties on record including principles laid down in cited rulings on behalf of workman.

My Issuewise findings are as follows:-

Findings on issue no. 3

This issue as preliminary issue has been decided by me on 21.03.2016 through detailed order in favour of workman and against management.

However I afforded opportunity to management to prove misconduct of workman by management.

Management after few dates examined MW1 Sh. S.N. Kapoor on 9.8.2016. Whose cross-examination was concluded on 24.10.2016.

Management examined MW2 Sh. Firoz Shetty on 24.10.2016. Who tendered his affidavit and his cross-examination was deferred to 10.11.2016. MW2 was cross-examined and his cross-examination concluded on 10.11.2016. Thereafter management closed its evidence.

Workman refused to adduce his evidence in rebuttal.

After perusal of evidence of MW1 and MW2 it is crystal clear that management could not prove misconduct of workman. In want of evidence of management, workman refused to adduce his evidence in rebuttal.

Inwant of required, reliable and credible evidence of management to prove misconduct of workman . Finding of 21..03.2016 on Issue No. 3 is liable to be reaffirmed in favour of workman and against management of Bank of Baroda. Which is accordingly decided.

Now I am deciding other issues.

On 6.1.2010 my Ld. Predecessor framed following two issues:-

1. As per reference.
2. Relief.

Aforesaid issue no. 1 includes in it following question of determination No. 1 mentioned in schedule of reference:-

“Whether the action of the management of Bank of Baroda, through their General Manager, Zonal Office, Northern Zone, 16 Sansad Marg, New Delhi -110001 in removing their workman. Sh. Anant Vir Jain , Ex-Clerk form service with effect from 26.04.2006 is just , fair and legal? If so its effect?

Burden to prove Issue No. 1 lies on management.

It is admitted fact that departmental enquiry was conducted against workman Sh. Anant Vir Jain, Ex-Clerk before his removal from services with effect from 26.04.2006.

In the instant case my Ld. Predecessor framed main issue No. 3 whether enquiry is just, fair and legal and ordered it to decide as preliminary issue. Which was decided by me on 21.03.2016 in favour of workman and against management of Bank of Baroda.

I afforded opportunity to management to prove misconduct of workman but management failed to prove it in want of required, reliable and credible evidence. Hence I again reaffirmed the previous findings on issue No. 3.

So Issue no. 1 is liable to be decided in favour of workman and against management of Bank of Baroda. Which is accordingly decided.

It is admitted fact that date of superannuation of workman was 31.08.2008 but she was removed on 26.04.2006 .

Question of determination no. 2 mentioned in schedule of reference as well as issue no. 2 framed by my Ld. Predecessor is relating to relief.

Which is to be decided.

It is relevant to mention here that material issue no.3 relating to departmental enquiry and question of determination in schedule of reference formulated as issue No.1. by my Ld. Predecessor have already been decided by me in favour of workman and against management. So workman is entitled to relief of reinstatement with back wages with 70% but workman has been removed from service by management on 26.04.2006 and he has been superannuated on 31.08.2008.

So reinstatement of workman is not at all possible. But on this count workman is entitled for 70% back wages since 26.04.2006 till his superannuation dated 31.08.2008 alongwith all retirement benefits .

Issue No. 2 is liable to be decided in favour of workman and against management. Which is accordingly decided.

Reference is liable to be decided in favour of workman and against management.

Claim statement is liable to be partly allowed. Which is accordingly decided with direction to management of Bank of Baroda to comply the award within two month after expiry of period of available remedy against this award.

Award is accordingly passed.

Dated : 02.05.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 30 जून, 2017

का.आ. 1615.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं. 80/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2017 को प्राप्त हुआ था।

[सं. एल-12011/54/2015-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th June, 2017

S.O. 1615.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the Industrial Dispute between the management of Dena Bank and their workmen, received by the Central Government on 30.06.2017.

[No. L-12011/54/2015-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

BHARAT PANDEY, Presiding Officer

I.D. 80/2015

Reference No.L-12011/54/2015-IR(B-II) dated: 5/8. 10.2015

General Secretary
Dena Bank Employees Union & Dena Bank Officer Union
Through Dena Bank, M.I.Road,
Jaipur.

V/s

General manager (H.R.M.)
Dena bank, C-10, G Block,
Bandra Kurla Complex,
Bandra East, Mumbai.

AWARD

10.4.2017

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रबन्धन देना बैंक, देना कॉर्पोरेट सेंटर, मुम्बई के द्वारा दो महिला कर्मचारों को Sexual Harassment की जॉच रिपोर्ट की प्रति नियमानुसार ना दिया जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो यूनियन किस अनुतोष को पाने की अधिकारी है?”

2. According to statement of claim briefly fact of the case is that one Shri Vimal Kumar Bairwa, Branch Manager during his posting at Bundi Branch (Rajasthan) sexually harassed a lady probationary officer. Aggrieved by the alleged harassment, she made a complaint dated 11.6.2013 to employer, DGM, Dena Bank, Delhi which reads as under :

“From:
Miss Neeru Jain
P.O.
BUNDI.

To,

D.G.M.

Dena Bank

Delhi.

Sub: Unedurable Behaviour of Branch Manager.

Respected Sir,

Since I joined branch some of problem I am facing shairing with you.

1. B.M. pressurise me to go with him for KCC visit after 6.30 p.m. Two times I went with him and we returned from there after 8.30 p.m. I say to B,M. that my parents doesn't allow me to go outside branch after 8.30 p.m., he says me if you can't go then why did you come in this sector.

2. I completed my work which is given to me, same day usually & do EOD approx. 6.30 p.m. after this I don't have work to do. I ask B.M. to go to home then he says you will not go home until I am in the branch. If I am till 9 p.m. in branch then you have to stay here with me. Sir, after EOD I don't have work then why should I stay here. Then B.M. says Miss, if you will not stay then no work will be provided to you. This Branch doesn't need you. B.M. says that I am B.M. & you are officer, you have to be in branch until you are allowed to go.

3. Branch Manager gave me gifts. When I refused to take them, then he told I am your Boss. You have to take everything given by me.

One day he told me, if I kiss you then what will you do. Your eyes looks beautiful, I wish to kiss them. After I refused he told that when I was in earlier branch there were two or three girls they never refused to me.

4. As I am new here I don't know about the limit of KCC. One day B.M. of Bank of India, Bundi made a call for our branch & told that you are giving 50,000 limits for KCC for which you are not eligible. Some of customers told that you are doing work with outside brokers for KCC.

Respected sir, as I am officer I have to face every customer. All they says this thing which is intolerable for me. I can't work in such kind of environment.

As I facing so many problems mentally, I am unable to continuous the work in such circumstances. As I notice you, all the things, if anything wrong with me, then bank management will be responsible. I request you to please to do the needful while considering all the things.

Date: 11/6/13

Signature illegible

(P.O., Bundi)"

3. It has been alleged in para 6 of statement of claim that above noted complaint of Miss Neeru Jain is self explanatory about seriousness of the crime, conduct of Branch Manager, Shri Vimal Kumar Bairwa & abuse & misuse of his official capacity.

4. In para 11 of statement of claim it has been alleged that Shri Vimal Kumar Bairwa came to Bharatpur branch as Branch Manager after above noted occurrence of June, 2013 & harassed another lady employee Ms. Shalini Parihar at Bharatpur branch. A complaint dated 30.1.2014 by Ms. Shalini Parihar regarding alleged harassment was submitted to the General Secretary, Dena Bank Employees Union, Rajasthan followed by direct complaint dated 1.2.2014 to the Zonal Manager, Dena Bank, Jaipur which reads as under :-

"The Zonal Manager,

Date- 1.02.14

Dena Bank, Jaipur.

Dear Sir,

Re- Objectionable behaviour of Shri Vimal Bairwa, Branch Manager.

I am highly upset on constant objectionable behaviour of above authority with me. Sir, off and on, for one pretext or another he wants me to visit his cabin, stairs and expresses with indecent kind of body language and signals and comments., He insits upon me to overstay in branch beyond duty hours and threatens that if I would not favour to his desires, he would frame charges on officials duty related issues on me and ruin my career. He threatens that no female can deny me.

Sir, I am only woman employee in this branch and can not share the stress I am facing from him. I am afraid he can harm me in any way.

Please protect me and get me out from his control. I have already informed my union leaders about the incident. I wish an action on such authority and in the meantime request you to please take out me from here to Jaipur or else remove this man from this branch because I have heard that he is a dangerous man and has a history of harassing women.

Hope an immediate action will be taken.

Yours faithfully,

Signature illegible

SHALINI PARIHAR

SWO BHARATPUR.”

5. Due to inaction of management against above noted two complaints & based on the information dated 30.1.2014 by Ms. Shalini Parihar, SWO to General Secretary, Dena Bank Employees Union, Rajasthan, strike notice dated 7.10.2014 was given by union to go on strike in Dena Bank in the state of Rajasthan. Both, Dena Bank Employees Union, Rajasthan, applicant no.1 & Dena Bank Officers Union, Rajasthan, applicant no.2 had jointly raised the issue of complaints for taking action against Shri Vimal Kumar Bairwa, Manager against his act of sexually harassment & reckless advances made by him against the lady complaints. The above noted reference for adjudication is the outcome of conciliation proceeding which resulted into failure.

6. In para 7 to 10 of the statement of claim reference has been made to different provisions of “THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013” regarding definition of “SEXUAL HARASSMENT”, “WORKPLACE”, Procedure of making complaint, duty of employer to appoint committee for investigation into the complaint & procedure to be followed before registering a case under section 509, Indian Penal Code, 1860 & any other relevant provision of the code wherever applicable.

7. It has been further alleged that section 11 of the above noted act of 2013 provides that when both the parties are employees they shall be given an appropriate opportunity of hearing & a copy of the findings shall be made available to both the parties to enable them to make representation against the findings before the committee. The Lady complainants have not been provided the copy of report of internal committee for investigation. The internal committee of the management of the bank responsible for investigating the matter for quite long time did not investigate & when the matter was investigated it flouted the law by not providing the copy of findings to the complainant female employees who are unaware about the report of investigation & in absence of copy of report they are unable to represent their case against the report of the committee. It has been further alleged that if Shri Vimal Kumar Bairwa was found guilty during investigation then bank must have moved ahead for reporting the matter to the police authority for registration of case u/s 509 of Indian Penal Code which has not been done which indicates the manipulation by the management to protect the Branch Manager, Shri Vimal Kumar Bairwa.

8. In above circumstances, it has been prayed that copy of the findings of the investigation by committee carried out in both the complaints of sexual harassment at workplace be provided to the victims.

9. Notices were sent to the opposite party which has been served & acknowledgement relating to service is available on the record of the file. On 31.5.2016 order was passed against the opposite party to proceed ex-parte because service of notice against the opposite party was found sufficient. On 6.3.2017 affidavit in evidence has been filed by applicant side along with documents. 13 Documents along with affidavit in evidence have been filed in which photocopy of the above noted complaint dated 11.6.2013 by Ms. Neeru Jain is also one among them.

10. Heard the argument of learned representative of the applicant Sh. Lokesh Mishra, General Secretary of the union & perused the record carefully.

11. It has been argued by Sh. Lokesh Mishra, General Secretary of the union that victims & complainants Miss Neeru Jain, Probationary Officer & Ms. Shalini Parihar, SWO have not been provided with enquiry report relating to their complaint & despite repeated demand management has failed to provide the copy. It has been further argued that no complaint has been submitted by management to police for registering the case against Shri Vimal Kumar Bairwa which indicates that management has protected the Branch Manager, Shri Vimal Kumar Bairwa & neither any reason has been assigned by management for not sending the case for registration to the police nor copy of report has been supplied to complainants.

12. As far as the question of evidence in support of statement of claim is concerned the entire affidavit is uncrossed examined testimony of the deponent Sh. Lokesh Mishra which supports the case of the applicant petitioner & there is no reason to discard the evidence adduced by applicant. As far as the question of right of the two lady victims to have the copy of enquiry report is concerned in this context provision of section 13 (1) of THE SEXUAL HARASSMENT

OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 is relevant which has been reproduced below :-

Inquiry report

“13.(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.”

13. The above noted provision clearly indicates that victims are entitled to the report relating to result of enquiry conducted by the concerned committee. There is no documentary or otherwise evidence available on record to show that victims have been provided with the copy of enquiry report. Document Ex7/1 filed along with affidavit is a letter dated 26.2.2015 sent by Regional Labour Commissioner(Central), Jaipur to both the victims wherein both the victims have been asked to answer whether they have written any letter to the union for securing the copy of enquiry report. The victims have also been asked whether they want the copy of enquiry report from management of the bank. Miss Neeru Jain has replied vide her letter dated 2.3.2015 wherein she has answered that she had written a letter to the union for acquiring enquiry report & she has further alleged that she wants copy of enquiry report from the management of the bank. From the perusal of the file it is clear that there is no evidence that both the ladies victims have got copy of enquiry report. No such information or reply in this regard has been submitted by opposite party. From the above discussion I am of the view that applicant has succeeded in proving that non supply of copy of enquiry report of sexual harassment to both the ladies by management of Dena Bank, Dena Corporate Centre, Mumbai is unjust & illegal. Applicant Union is entitled to get the copy of the enquiry report to be given to both the lady complainants. Rest of the reliefs claimed in statement of claim are dismissed as devoid of merit. The claim petition of the applicant is accordingly allowed.

14. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 30 जून, 2017

का.आ. 1616.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक न्यायाधिकरण, पुणे (महाराष्ट्र) के पंचाट (संदर्भ सं. 10/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/122/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th June, 2017

S.O. 1616.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2007) of the Industrial Tribunal, Pune (Maharashtra) as shown in the Annexure, in the Industrial Dispute between the management of Dena Bank and their workmen, received by the Central Government on 30.06.2017.

[No. L-12012/122/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE INDUSTRIAL TRIBUNAL MAHARASHTRA AT PUNE

Reference (IT) No. 10/2007

The Regional Manager
Dena Bank, Regional Office,
Madhav Chambers, 398/A,
Senapati Bapat Road,
Pune 411 016

...First Party

AND

Kamlakar Gulabrao Salvi
27, Chandrama Nagar,
Near Mental Hospital
Yerawada, Pune 411 006

...Second Party

CORAM : Shri M.R. Kumbhar, Presiding Officer

APPEARANCES :

Mr. A.K. Gupte, Advocate for first party

Mr. A.V. Satpute, Advocate for Second Party

AWARD

(Dated : 27.04.2017)

This is a reference referred by the Government of India, for adjudication of industrial dispute between The Regional Manager, Dena Bank, Pune (First Party, for short) and Shri. Kamlakar Gulabrao Salvi (Second Party, for short), U/s.2A of sub-sec-(1) of clause-(d) of Sec-10 of the Industrial Disputes Act, 1947 along with schedule of demand which is as follows :-

"Whether the action of the management of Dena Bank in not regularising Shri. Kamlakar Gulabrao Salvi on permanent basis is legal and justified ? If not, to what relief the concerned workman is entitled ?"

2. After the receipt of the said reference to this Tribunal, notices were issued to both the parties. In response to that Shri A.V. Satpute, Advocate filed appearance on behalf of the second party and Shri A.K. Gupte, Advocate for the first party bank.

3. The second party workman filed his statement of claim below Exh.U-2 and contended that he was employed as peon in 1993 for Pune district, and thereafter he was deprived by the first party of his legal dues including permanency, therefore he raised the dispute with the Asst. Commissioner of Labour (Central) Pune. It is further contended that, the first party bank is a public sector undertaking called as Dena Bank. The local responsible officer for the employments related matters etc., is the regional manager Dena bank. The first party is engaged in unfair labour practice. It is contended that the second party was firstly employed by first party bank as badli peon from February 1993 following the due selection procedure. He was interviewed by the selection panel and was promised to absorb in the employment. Since then the second party workman is in the employment of the first party bank as badli peon.

4. The second party further contended that, since February 1993 he worked with various branches of bank as badli/temporary peon. The first party was not giving job regularly in order to deprive the second party the benefits in the service like, permanency and other related benefits. At the same time bank has made permanent to other badli persons who were junior to the second party and were not employed by following due selection process of the bank. The second party further contended that, he has worked for last 14 years, the details are as per annexure attached separately. The second party has worked for more than 240 days continuously in the year 2001 from February 2001 to 26/11/2001 total working days were 282 days.

5. The second party further contended that, the personal department of Mumbai head office of first party bank asked the information about the second party from the Zonal office for making him permanent, but no action taken by the first party. It is further contended that, since the second party joined as a badli peon from February 1993 many of the peons have retired, some of them have taken VRS, and about 20 of the peons were promoted as clerk, but still the first party has not made second party neither permanent nor gave the badli/temporary job of peon. There are more than 10 badli peons working in the bank. The officers of the bank orally promised the second party that if he was interested then he should check up every months for job with the bank.

The bank has not given job inbetween July 2003 and May 2007 though the second party belongs to schedule caste, at sr.no.1 schedule caste category. The second party used to visit every month to the first party bank, but there was no vacancy for him, therefore the second party issued legal notice to the first party bank on 22/02/2006, but it was not replied by the first party bank. Therefore, the dispute is raised before the Asstt. Labour Commissioner (Central) Pune. Before the conciliation officer, the first party bank submitted their reply and admitted most of the claim of the second party. However, the first party failed to accept the demand of the second party, therefore, no amicable settlement arrived in conciliation proceedings and the matter was referred in September 2006 before this Tribunal. It is prayed that reference be admitted and accepted in toto regularise the services of the second party w.e.f. November 1993, and the first party be restrained from harassing the second party and be directed to pay due salary and overtime, and further direct not to terminate/ discontinue the services of the second party untill the disposal of the reference.

6. The first party bank opposed the claim by filing written statement below Exh.C-7 and denied all the allegations made by the second party against them. It is stated that the present reference itself is not maintainable because it was made under the presumption that the employer-employee relationship exists. The dispute is not an industrial dispute, the second party is trying to get back-door entry in the employment of the first party bank, which is not permissible under law. In the bank no post of peon was available, the relationship and status of workman as well as the period of employment is denied. It is further stated that, the second party has never gone through the recruitment process, and

also denied that second party has worked continuously more than 240 days in a year. It is also denied that, second party was working from 1993 to 2001 continuously as a peon.

7. The first party further stated that, the second party cannot be said to be a workman U/s.2(s) of the I.D. Act and the present dispute cannot be treated as industrial dispute U/s.2(k) of the I.D. Act, & therefore, the preliminary issues be framed for maintainability of the reference. And lastly prayed that reference is liable to be dismissed.

8. Upon rival pleadings of the parties, the following Issues arise for my determination, and my findings to them are as follows:

	POINTS	FINDINGS
1	Whether the present reference is tenable ?	No;
2	Whether the action of the first party bank in not regularising the second party in service is illegal ?	No;
3	If not, to what relief/award second party is entitled ?	As per final award.

REASONS

9. Heard both the Ld. Advocates at length. Perused the oral as well as documentary evidence of both parties and the case law relied by the parties, and I have gone through the voluminous record filed by the parties.

10. It appears that initially in this reference award was passed on 10/03/2014 by my Ld. Predecessor and has answered the award in affirmative, and held that second party is entitled to be made permanent w.e.f. 01/08/2007 and to give the benefits of permanency accordingly, & permanency benefits shall include wages & allowances, etc as applicable to the permanent employees.

11. It also appears that, against the said award W.P. No.10024/2015 was filed before the Hon'ble High Court, and the Hon'ble High Court by its order dated 24/06/2016 disposed of the petition in terms of following order-

- (i) *The impugned award of the Industrial Tribunal dated 10/03/2014 is set aside and Ref.(IT) No.10/2007 is remanded to the Industrial Tribunal, Pune for a fresh consideration in accordance with law. The interim order passed by the Industrial Tribunal in the reference on 11/04/2008 shall continue to operate during the pendency of the reference.*
- (ii) *All rights and contentions of the parties on merits are kept open, to be decided by the Industrial Tribunal in the pending reference.*
- (iii) *In pursuance of the interim order referred to above, the Petitioner herein shall continue to employ the respondent as a badli worker in Pune region.*
- (iv) *The Industrial Tribunal shall dispose of the pending reference as expeditiously as possible, and in any event, within a period of six months from today.*

12. After remand of reference it was on board on 06/09/2016. On the said date the second party filed application below Exh.U-25 for his transfer at Shivajinagar branch. To that the first party replied below Exh.C-18 and stated that the second party joined at Satara branch on 11/11/2010 and still he is working. Thereafter the second party filed amendment application below Exh.U-31 which was allowed, and the first party has filed additional written statement below Exh.24 dated 16/12/2016.

13. In order to prove his case, the second party has filed affidavit by way of examination in chief below Exh.U-37, and stated that he has filed affidavit below Exh.U-8 & U-19 also be treated as his evidence, and he was duly cross-examined by the first party bank, and thereafter filed the evidence closed pursis. The first party bank has filed the affidavit by way of examination in chief below Exh.C-32 of Shri Rohit Jiniwal, Asst. General Manager of the bank. He was duly cross-examined by the second party, and thereafter the first party submitted the evidence closed pursis on record.

14. The second party in his evidence stated as per the stand taken in the pleadings, and stated that initially he was appointed as badli peon in February 1993 by the first party bank. He further stated that, he was selected by following the due selection procedure, and other 8 candidates were also selected. He stated that he was registered with the Employment Exchange. The first party had called candidates from Employment exchange as per the requirement, and thereafter he was interviewed and selected. He stated that he worked in various branches of the bank as badli peon. He further stated that others who were junior and some direct recruiters were given job. He further stated that the first party bank has made permanent to other badli persons who were junior to him, and even though they were not appointed by following the due procedure. He further stated that, he worked for more than 240 days continuously during the certain

period. He stated that in February 2001 to November 2001 he worked for 282 days, and from 05/01/2008 to 31/07/2009 he worked for 567 days, and during this period he received salary through bank; and from 05/08/1998 to 31/12/1998 he worked for 146 days. The second party further stated in evidence that, according to the circular of first party dtd. 23/08/2001 submitted to conciliation officer on 13/06/2007 in which stated that an employee who completed 240 days has to be made permanent, but till date the second party is in employment of the bank, but he was not made permanent.

15. The second party in his cross-examination below Exh.U-8, U-19 & U-37 admitted that he was not member of any union. And also admitted that at first party bank A.I.B.A union is working and he is not member of the said union. He admitted that the present reference is filed for permanency and he individually filed the same. He also admitted that neither the union, nor any member of union has supported his case. He further admitted that he worked as "badli employee" in leave period of regular employees and branch manager has no authority to appoint or recruit the regular employees. Lastly he admitted that regular employees used to sign the muster, but he has not signed the muster regularly. Further admitted that he has not filed on record his letter of appointment.

16. As against this, the witness of the first party deposed at Exh.C-32 and has taken the stand as per the written statement. The witness of first party stated that, second party has raised his dispute in his individual capacity and none of the workmen or union functioning in the first party bank are supporting the second party, therefore there is no industrial dispute and present reference is not maintainable, and second party has no right to raise such type of industrial dispute. He further stated that, the first party bank is a public sector undertaking and making regular and permanent employments, it is obligatory to the bank to follow the recruitment procedure. The witness further stated that, the mode of recruitment of sub staff would be through calling the applications from respective district employment exchange of the concerned state in which the recruitment would be made. The selection of sub staff would be on the basis of interview only. The witness further stated that, the second party was never informed by employment exchange. The second party was deputed in leave of sub-staff as badli sub-staff. The second party was never appointed by following the due process of recruitment, and he never completed continuous service of 240 days in any year. It is denied that second party was continuously working from 1993. The second party was not given appointment letter, and he is not eligible for permanent employment of the first party bank.

17. The witness was duly cross-examined by the second party. But none of the documents filed on record are referred to the witness, nor they are exhibited and nor they are admitted by the first party bank, only xerox copies of the documents are filed on record. The second party has failed to put his case and prove his contention as per the pleadings in the statement of claim. The pleadings in the statement of claim and documents on record and cross-examination of witness of the first party and evidence adduced by second party on record are contradictory to each other. The voluminous documents are filed on record by both the parties, especially the second party though filed documents, but some documents are neither exhibited nor proved, and they are neither supporting the pleadings of the second party, therefore they are not liable to be taken into consideration.

18. But some documents which are filed below Exh.U-20 they are application dated 22/08/2005 which is under the RTI Act. At page-6 copy of circular dated 23/08/2001. Copy of bank account of second party, at page-15 internal communication of first party bank and page-17 letter of January 1999 is produced on record which is self-explanatory. And the said letter is addressed to first party bank asking for permanent employment in the bank, and it is stated that from 1993 to 1999 he worked at various branches for total 328 days. This letter is sufficient to draw inference that second party was not continuously working at any branch of the first party bank. At page-49 copy of notice issued by the Advocate on behalf of the second party dated 22/02/2006 is the demand notice of second party. That notice is self-explanatory and from 1995 to 1998 and from July 2003 till 22/02/2006 he was not provided work by the first party. At page-52 it is reply of the bank dated 13/06/2006 filed before the conciliation officer, at page-53 is the copy of settlement between the bank and the union. This document is contradictory to the pleadings of the second party. Remaining all documents are from year 2007 till onwards and they are not relevant to the present reference, but still they are filed on record.

From the above documents one can safely draw the inference that, the second party is changing his stand each and every time as per his convenience, and on perusal of the statement of claim, it reveals that second party is claiming regularisation from 1993.

19. The present dispute is referred by the Central Government regarding regularisation and permanency of the second party. Therefore, whatever is stated in prayer clauses of the statement of claim is not much relevant. This tribunal requires to consider what is legal and settled position of law. It should not be ignored that the reference is forwarded under clause-(d) of Sub-Sec-(1) of Sub-Sec-2A of Sec-10 of the I.D. Act. It is therefore necessary to see Section-2A of the I.D. Act. I have gone through the said section 2A and from bare perusal of the section it reveals that it for dismissal, discharge of workman. But in the present case according to the second party he is in the employment from 1993. Therefore, it is necessary to mention here that what is industrial dispute U/s.2k of the Act. From the bare perusal of the Section-2k it relates to dispute or difference between employers & employees, employers & workmen,

workmen & workmen. But the reference referred is in the individual capacity of the second party workman. The order of the reference is dated 10/07/2007 U/s.10- of Section-2A(d) of the I.D. Act, thereby referred for adjudication of demands raised by the individual workman i.e. second party along with schedule pursuant to the said impugned order of reference No.L-12012/122/2006-IR(B-II) Government of India, came to be registered as Ref.(IT) No.10/2007 before this Tribunal. The first party bank filed written statement below Exh.C-7 and raised objection that reference is not maintainable as dispute referred for adjudication in the said reference was at the behest of the individual workman and unless such dispute was raised by the trade union registered under the Trade Unions Act, 1926, the reference to not have been raised.

20. It is not disputed that, the second party in his individual capacity addressed the letter to the Asstt. Labour Commissioner (Central) Pune on 22/06/2006 and raised the grievances that he is entitled to be regularised in the employment of the bank. He also pointed out that, he has completed 240 days continuous service and juniors are made permanent. He was selected by the approved panel of badli peon, and there were nine candidates including the second party, on the approved panel of badli peon/sepoys and second party was at Sr.No.1 in the scheduled caste category. The badli peons are absorbed in the regular services of the bank only when permanent vacancy arises in the category, otherwise he will continue as badli till vacancies arise. The second party is still in the employment as badli peon of the bank.

21. The dispute was not sponsored or taken up by any trade union, despite the fact that there is A.I.B.A. union and the registered trade union of the bank employees representing the employees of the first party bank. The conciliation proceedings were held and the Asstt. Commissioner of Labour, (Central) submitted his failure report. As per Sec-2(A) of the I.D. Act, if it is presumed that it was U/s.2(k) of the Act, the "industrial disputes" means any dispute or difference between employer & employer, or employer & workman, or between workman & workman which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. The Sec-2(a) which was added in the scheme of the Act w.e.f. 01/12/1965 provided for an individual workman's disputes and it states as - (i) where any employer discharges, dismissed, retrenched or otherwise terminates the services of the individual workman, any dispute or difference between that workman and his employer connected with or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute. Notwithstanding that no other workmen nor any union of the workmen is party to the dispute.

22. From the bare perusal, it is clear that the scheme of the Act provides for individual dispute to be referred for adjudication only in case of discharge, dismissal, retrenchment or otherwise termination of services of an individual workman. The grievances raised by the second party in his representation to the Asstt. Commissioner of Labour, (Central) was not regarding the termination of his services by any mode i.e. discharge, dismissal or retrenchment either orally or in writing.

23. It is necessary to mention here that, the Hon'ble Supreme Court in the case of Workmen V/s. Hindustan Lever Ltd., reported in 1984-(4)-SCC-395 observed that, "4: Section-10(1) confers power on the appropriate Government to refer an existing or apprehended industrial dispute amongst other to the Industrial Tribunal for adjudication. The dispute therefore which can be referred for adjudication of necessity has to be an industrial dispute which would clothe the appropriate Government with power to make the reference, and the Industrial Tribunal to adjudicate it.

24. The present dispute referred which was raised by the second party, it does not amount to industrial disputes as defined under the I.D. Act. Obviously, the appropriate government has no power to make reference of such dispute for adjudication. According to the Schedule of the reference as reproduced above, undoubtedly, it was not an industrial dispute as defined under Section-2(k) or 2(A) of the Act. Therefore it could not have been referred, the reference order of the Government itself is void.

25. The Ld. Advocate for the first party has relied on the observations of the Hon'ble Supreme Court in the case of State of Punjab V/s. The Gondhara Transport Co.P. Ltd., reported in 1975-LAB.IC-358-SC; wherein the Hon'ble Supreme Court has held that,

"the espousing of the cause of the workmen was only by five workmen who were, at the relevant time actually in the employment of the company i.e. the proportion was five to sixty. Such an espousal could not be considered to be by an appreciable or substantial body of workmen so as to constitute the dispute an industrial dispute. Hence there being no industrial dispute the reference made by the State Government was in-competent".

He further relied on the observations of the Hon'ble Bombay High Court in W.P. No.10023/2015 between Dena Bank V/s. Sarjerao Khandagale, decided on 09/02/2016, and the para-5 of the said judgment is very much relevant to the case in hand. It is necessary to reproduce the same as under:

"The next question that needs to be addressed is: whether the Tribunal committed any manifest error in answering the Reference partly in favour of the workman so as to require the Management to treat the concerned workman as permanent employee. This question will have to be answered keeping in

mind the exposition of the Apex Court in the case of Telecom District Manager & Ors V/s. Keshab Deb reported in (2008) II CLR 492. In para-22 of this decision, the court has noted that the service of the respondent therein was terminated on the ground that he committed misconduct, without affording opportunity of being heard. The Apex Court went on to observe that while, however, granting the relief, the superior courts should take into consideration the factors relevant therefore, such as recruitment of the respondent was ex-facie illegal as prior to thereto neither any advertisement was issued nor the employment exchange was notified in regard to the vacancy. Further, whether the respondent had even got himself registered with the local employment exchange and thirdly, that being a daily-rated casual employee, did not have any right to continue in service. In para-23, the Apex court went on to observe as follows:

"23. Even in a case where an order of termination is illegal, an automatic direction for reinstatement with full back wages is not contemplated. He was at best entitled to one month's pay in lieu of one month's notice and wages of 15 days of each completed year of service as envisaged U/s.25F of the Industrial Disputes Act. He could have been directed to be regularised in service or granted any/given a temporary status. Such a scheme has been held to be unconstitutional by this court in A. Umarani V/s. Registrar, Co-op. Societies and Secy. State of Karnatak V/s. Umadevi".

26. In the present reference, after perusing the oral evidence of the parties, I found that the second party has admitted that no appointment order was issued, neither he had signed any muster-roll, nor he was recommended by the Employment exchange. From this it is clear that, his employment was not from the regular stream of appointment, and such recruitment would be ex-facie illegal as no prior advertisement was issued, nor the employment exchange was notified in regard to the vacancy. Moreover being a daily-rated, badli, casual employee such as second party would not get any right to continue in service in the first party bank.

27. The Ld. Advocate for first party further relied on the case law between Ramakrishan Kamat V/s. State of Karnataka & Ors., reported in 2003-I-CLR-803-SC, wherein the Hon'ble Supreme Court in para-7 of the said judgment observed that,

"while being sympathetic to the persons who come before the court the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment. The Ld. single judge in this view, rightly so in our opinion, held that, "in such situation it is difficult to accept the plea of the petitioner that they were appointed against regular post and appointment orders would clearly indicate that the appointment of the teachers was purely temporary and on honorarium basis subject to its approval by the State Government and petitioners have not produced any document to show that their appointment has been approved by State government. Hence the petitioners are not entitled to regularisation".

Considering all above case law referred by the first party, the facts in the present case and the facts in the referred cases are same and these case law are helpful to the case of the first party bank.

28. The Ld. Advocate for the second party relied on the two case law between Gopal Krishnaji Ketkar V/s. Mohamed Haji Latif, reported in AIR-SC-1968-1413, on the point of adverse inference; and the second case law is between Hari Nandan Prasad V/s. Employer I/R to Management of Fci, reported in 2014-I-CLR-919, on the point of regularisation. These two case law filed by the second party instead of supporting their case, it is supporting the case of the first party bank.

In Hari Nandan Prasad case (Supra) in para-34 the Hon'ble Supreme Court has observed as under:

"On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularising only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularising would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily wagger etc. may amount to back-door entry into the service which is an anathema to Art-14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative

of Art-14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art-14, rather than violating this constitutional provision".

Hence the pleading in the statement of claim and the evidence adduced before the Tribunal are totally on different facts. Therefore, the case law relied by the second party in my view is not helpful to his case. What is pleaded is not proved, and what is argued is not pleaded in the statement of claim. The case of the second party is that, he is in service from 1993 as 'badli' peon. The statement of claim is self explanatory, that he was not appointed as per recruitment process, and he was not given appointment letter at all, and he is working on leave vacancies, if any permanent employee of bank is on leave.

29. The law is settled that, there cannot be a case of regularisation without there being a employer-employee relationship. The direction for regularisation, absorption or permanent, continuance unless the employee claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against the sanctioned vacant posts. Considering the entry of second party in bank as badli peon itself indicates that he is not entitled for regularisation in employment.

30. The second party has miserably failed to prove and establish that, the action of the management of Dena Bank in not regularising him on permanent post is illegal, and therefore in my opinion all Issues should be answered in the negative. Hence, I accordingly answer these Issues in the negative and proceed to pass following award.

-: AWARD :-

1. The reference is answered in the negative.
2. No orders as to cost.
3. Copies of award be sent to Government for necessary action.

Place: Pune.

Dated : 27/04/2017

M. R. KUMBHAR, Presiding Officer

नई दिल्ली, 30 जून, 2017

का.आ. 1617.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, ऑल इंडिया इंस्टिट्यूट ऑफ मेडिकल साइंसेस, नई दिल्ली एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ सं. 41/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-42011/43/2016-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 30th June, 2017

S.O. 1617.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 41/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, All India Institute of Medical Sciences, New Delhi and their workman, which was received by the Central Government on 08.06.2017.

[No. L-42011/43/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 41/2016

Sh. Bachan Singh Rana, S/o Late Sh. Jai Singh Rana,
R/o H. No. 243, Village Kheda Kala,
Delhi-82.

Versus

The Director,
All India Institute Of Medical Sciences,

Ansari Road,
New Delhi-110029.

Ex-parte AWARD

Reference No. L-42011/43/2016-IR(DU) was sent to this Tribunal on 6.5.2016 by Ministry of Labour, Govt. of India, New Delhi. Which received in this Tribunal on 15.06.2016.

Which was register as I.D. No. 41/2016 and notices to parties were issued for filing of claim statement on 22.07.2016.

Claimant/workman appeared on 22.07.2016 and filed his claim statement alongwith its copy to be supplied to respondent. I fixed 15.09.2016 for written statement.

On 15.09.2016 only workman came but none came on behalf of respondent nor undelivered registered letter containing notice of respondent returned back.

However workman expressed his desire to move an application to presume the service of notice on management. He sought time to move such application.

Hence case was adjourned to 26.09.2016.

On 26.09.2016 workman moved an application to presume service of notice on management before lunch. I called upon report from office after lunch. Which was submitted by office. So I passed detailed order after lunch presuming service of notice on respondent and fixed 19.10.2016 for ex-parte evidence of workman.

On 19.10.2016 workman in his ex-parte evidence tendered his affidavit.

I fixed 21.11.2016 workman expressed his desire to file written arguments hence I fixed 26.12.2016.

But workman has filed his written argument on 22.12.2016. So I reserved the award on 26.12.2016.

According to schedule of reference following questions of determination are to be determined.

1. Whether the action of the management of AIIMS in not issuing the experience certificate to Sh. Bachan Singh Rana for period he has rendered services with the management as Mechanic (AC and refrigeration) on daily wages i.e. January 1995 to August , 2003, is not justified?
2. It so what relief the workman is entitled to and what directions are necessary in this respect?

Inwant of pleadings and evidence of management of AIIMS my question of determination –wise findings are as follows:-

Findings on question of determination No. 1

Burden to prove question of determination No. 1 lies on workman.

To prove it he filed his affidavit in his evidence. Which was tendered by him alongwith copies of documents. None on behalf of management came to cross-examine his versacity. Hence testimony of workman is unrebutted hence reliable and credible. So it comes within the purview of required evidence.

On the basis of which question of determination No. 1 is liable to be decided in favour of workman and against management of AIIMS.

Findings on question of determination No. 2

Question of determination No.2 relates to relief to workman.

As question of determination No. 1 has already been decided in favour of workman and against management .

Hence question of determination No. 2 which in respect of relief workman is also liable to be decided in favour of workman and workman is entitled for relief of grant of experience certificate as demanded by him from management of AIIMS and management is directed to issue it to workman.

Reference is liable to be decided in favour of workman and against management of AIIMS.

Which is accordingly decided and claim statement is allowed.

Ex-parte Award is here-by passed with direction to management to issue experience certificate to workman within two month after expiry of available remedy against this ex-parte Award.

Dated : 21.02.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2017

का.आ. 1618.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कम्बटा एविएशन प्राईवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 59 ऑफ 2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.06.2017 को प्राप्त हुआ था।

[सं. एल-20013/2/2017-आई.आर. (सी.एम.-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 3rd July, 2017

S.O. 1618.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the award of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Delhi (Filed directly by workman u/s 33(2)(b) (Ref. No. 59 of 2015) as shown in Annexure, in the industrial dispute between the employers in relation to the Director, of M/S. Cambata Aviation Pvt. Ltd. and their workman, which was received by the Central Government on 29.06.2017.

[No. L-20013/2/2017-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI

ID. No. 59/15

Management of
M/s. Cambata Aviation Pvt. Ltd.,
IGI Airport, Terminal II
Line Maintenance, Block 'A'
New Delhi – 110037

...Applicant/Management

V/s

Mr. Satpal,
S/o Mr. Jai Singh,
VPO, Mundahera,
Tehsil & Distt. Jhajjar,
Haryana-124146.

...Respondent/Opposite Party

EX-PARTE AWARD

Sh. Y. S. Cooper, Authorized Signatory on behalf of Cambata Aviation Pvt. Ltd. moved an application UNDER SECTION 33(2)(B) OF THE INDUSTRIAL DISPUTES ACT, 1947 alongwith affidavit on 22.04.2015.

Wherein management stated as follows:-

1. That the present application u/s 33 (2) (b) of the I D Act has been filed by the management seeking approval of the action of the management in removing the workman from the services of the management on 22.4.15.
2. That prior to the dismissal of the services of the workman the workman was issued with a charge sheet No. CAPL/PER/1492/2015 dt. 14.1.2015 in which allegations of mis-conduct were levelled against him.
3. That the workman replied to the charge sheet vide his letters dt. 19.1.2015 and 30.1.2015 in which he denied all the charges and submitted a comprehensive reply to the charge sheet.

4. That, however, without considering the reply filed by the workman and without extending an opportunity of being heard to the workman the management removed him from service vide order dt. 22.4.15 and instituted the present OP No.____/15 U/s 33 (2) (b) of the I D Act, 1947 seeking approval of the action taken against the workman.
5. That since no enquiry has been held against the workman the application u/s 33 (2) (b) filed by the management against the workman is liable to be dismissed at the threshold itself.
6. That, however, it is also humbly submitted that even if this Hon'ble Court comes to the conclusion that the present O P is maintainable, in the present circumstances, then the management would have to prove the charges against the workman before this Hon'ble Court for which extensive evidence needs to be adduced which may take considerable time.
7. That the very purpose of the management in removing the workman from service without holding any domestic enquiry was to avoid making payment of subsistence allowance to the workman during the pendency of the enquiry proceedings. By approaching this Hon'ble Court after removing the workman from service without holding an enquiry the management is harassing him by snatching away his valuable right to payment of subsistence allowance during the domestic enquiry so that he is made to surrender before the management.
8. That it is an accepted principle in industrial law that in case the enquiry is vitiated and set aside or no enquiry is held and if the charges are to be proved before the court then the workman is entitled for subsistence allowance during the pendency of the proceedings before the Hon'ble Court.
9. That it is also humbly submitted that as per the rules of the management also no workman could be dismissed/removed from service without holding an enquiry into the charges.
10. That the management has dismissed/removed the workman from service without holding any enquiry to avoid payment of subsistence allowance to him and to cause further harassment to him since the management is aware that the workman would not be in a position to defend the present proceedings in the absence of any subsistence allowance as he is depending on his wages for daily survival and he is the only earning member of his family.
11. That as per their own rules the management is liable to make payment subsistence allowance to the workman @ 75% of the last drawn monthly wages of a workman during domestic enquiry proceedings into allegations of misconduct. Under the above circumstances, the workman is entitled to receive 75 % of his last drawn wages as subsistence allowance by way of interim relief to enable him to survive and to defend the present proceedings.
12. That the Hon'ble Supreme Court in case of M/s Sasa Musa Sugar Mills Vs. Shobrat Khan 1959 AIR (SC) 923 has held that even if the case against the workman is up held by the Court the would be entitled for subsistence allowance during the pendency of proceedings before the Court since the enquiry is being conducted before the Hon'ble Court only.
13. That the management has not conducted the domestic enquiry against the workman and the enquiry into the charges levelled against the workman has to be conducted before this Hon'ble Court. It is, therefore, incumbent upon the management to make payment of wages to the workman during the pendency of the proceedings this Hon'ble Court.

PRAYER

In view of the above, it is most humbly prayed that this Hon'ble court may be pleased to pass an interim award in favor of the workman and against the management directing the management to make payment of subsistence allowance to the workman every month at the rate of 75% of his last drawn wages, during the pendency of the present case in the interest of justice.

Which was registered as ID.No.59/2015. Registered notice of workman was issued for filing written statement on 3.07.2015.

On 3.07.2015 workman filed reply. Contents of reply are as follows:-

PRELIMINARY SUBMISSIONS

1. The workman denied to charges vehemently and vide his letter dt.19.1.15 and 30.1.15 brought to the notice of the management the true facts of the case. However, without giving an opportunity to the workman the management removed him from service on 22.4.15
2. It is humbly submitted that no enquiry has been held with respect to the charges leveled against the workman. Therefore, no application u/s 33 (2) (b) could have been filed by the management after removing the workman from service without holding a management after removing the workman from service without holding a domestic enquiry against the workman. The present application filed by the management is, therefore, liable to dismissed on this ground alone.

3. Without prejudice to the above it is also humbly submitted that one full month's wages along with the other pending dues has not been paid to the workman thereby making the removal not in conformity with Section 33 (2) (b) of the I D Act.
4. Without prejudice to the above, it is further humbly submitted that the punishment imposed on the workman by the management is disproportionate as compared to the allegations made against him.
5. Without prejudice to the above, it is further humbly submitted that the punishment imposed on the workman is by way of victimization on account of his trade union activities. The workman has been an important activist of the Cambata Aviation Workers Union (Regd.) and the charges levelled against him are false and fabricated. The action against the workman is motivated only by the intention to put a stop to the trade union activities of the workman.

REPLY PARAWISE

Without prejudice to the above preliminary objections, the parawise reply of the workman to the application filed by the management u/s 33 (2) (b) of the I D Act is as under:-

1. Para No. 1 needs no reply.
2. With respect to the contents of para No. 2 AND 3 of the application of the management, it is humbly submitted that the contents of the same are wrong and are hence denied.
3. With respect to the contents of para No. (4) of the application of the management, it is humbly submitted that the contents of the same are wrong and are hence denied. The contents of the charge sheet issued to the workmen were false, fabricated and with a malafide intention to victimize the workmen for his trade union activities. It is denied that the workman ever resorted to any strike as alleged by the management or at all. There was no strike by the employees as alleged by the management. The workman had brought to the notice of the management the correct facts vide his reply dt. 19.1.15 and 30.1.15 to the charge sheet. However, without considering the same the management removed the workman from service.
4. With respect to the contents of para No. 5 of the application it is humbly submitted that there was no reason why the management could have avoid holding a domestic enquiry in to the charges against the workman. It is vehemently denied that in the present situation holding of domestic enquiry into the charges has not been found to be practicable/feasible, hence the holding of enquiry has been dispensed with. It is denied that workman's further continuation in service is not considered to be in the interest of the Company. No such extenuating circumstances to avoid the enquiry existed. The only reason why the management avoided the enquiry was to escape was to eacape the liability of making payment of subsistence allowance to the workman during the pendency of the enquiry proceedings.
5. With respect to the contents of para No. 6 of the application, it is humbly submitted that the contents of the same are wrong and are vehemently denied. The penalty of removal from service was imposed on the workman on account of his trade union activities and to remove from the scene a pillar of strength of the union. It is humbly submitted that no full wages for one month has been paid to the workman by the management in compliance with Section 33 (2) (b) of the I D Act.
6. With respect to the contents of para No. 7 of the application, it is humbly submitted that the management was liable to hold a domestic enquiry into the charges against the workman and also to fulfill other conditions precedent to removing the workman from service before application u/s 33 (2) (b) of the I D Act may be filed. It is vehemently denied that the management could be permitted to hold an enquiry into the charges before this Hon'ble Court in the matter after they have removed the workman from service without holding any enquiry.
7. With respect to the contents of para No. 8 of the application, it is humbly submitted that the contents of the same are wrong and denied. It is humbly submitted that there is non-compliance with the mandatory provisions of section 33 (2) (b) of the I D Act by the management.
8. With respect to the contents of para No. 9 of the application, it is humbly submitted that the contents of the same are wrong and denied. It is humbly submitted that the miss-conduct against the workman is connected with the same dispute pending before this Hon'ble Court and the management has removed the workman from service to prevent the workman from pursuing I D No. 122/12 pending before this Hon'ble Tribunal.

The prayer made by the management is devoid of merit or substance. The workman has been victimized for his trade union activities. No enquiry has been held in the matter without which the management could not have filed an application u/s 33 (2) (b) of the I D Act.

In view of the above, it is humbly submitted that the application u/s 33 (2) (b) filed by the management may be rejected in the interest of justice.

On 10.08.2015 rejoinder on behalf of management of Cambata Aviation has been filed. Through which contents of application of management of Cambata Aviation has been reaffirmed.

On 14.03.2016 I framed following three issues as follows:—

- i. Whether removal of Sh. Satpal from the services is justified? If so, its effect?
- ii. Whether the application of management /applicant under section 33(2)(b) of the I.D. Act 1947 is maintainable? If so its effect?
- iii. To what relief the workman is entitled to and from which date.

And fixed 17.05.2016 for management evidence. On 17.05.2016 management filed affidavit of Management witness Sh. C.S Madan alongwith its copy.

I fixed 27.07.2016 for tendering of affidavit and cross-examination of management evidence.

On 27.07.2016 workman has not turn up. Case proceeded ex-parte against him.

Statement of MW1 Sh. C.S Madan, tendered his affidavit and his cross-examination was marked Nil as none turn up to cross-examine him.

Management filed written arguments on 28.09.2016.

Contents of written arguments are as follows:-

1. Mr. Satpal, the workman, joined was the Management as a Trainee Utility Hand Grade II w.e.f.25 August 2007 vide letter No. CAPL/PER/1492/2007 dated 24 August 2007 (Ex MW1/1). Thereafter, he was put on probation w.e.f. 01 March 2008 as Utility Hand Grade II vide letter No. CAPL/PER/1492/2008 dated 29 February 2008 (Ex MW1/2) and subsequently was confirmed in the said post w.e.f. 01 October 2008 vide letter No. CAPL/PER/1492/2008 dated 01 October 2008 (Ex MW1/3). The workman was promoted as Driver cum Utility Hand Grade II w.e.f. 01 November 2010 vide letter No. CAPL/PER/1492/2010 dated 16 November 2010 (Ex MW1/4).
2. The workman was issued Charge Sheet No. CAPL/PER/1492/2015 dated 14 January 2015 (Ex MW1/5) for the following acts of omission and commission :-
 - (i) Coercing and/or instigating the workers for unlawful cessation of work and resorting to strike and for their subversive conduct/behavior at the IGI Airport, Delhi.
 - (ii) Unauthorized and without permission entry into the Airport premises when not on duty thereby misuse of the Airport Entry Pass (AEP).
 - (iii) Loss of confidence and /or faith.
 - (iv) Causing financial loss to the Company.
 - (v) Failure of observe Airport rules.
 - (vi) An act subversive of decency and discipline.
 - (vii) An act prejudicial or likely to be prejudicial to the interest and /or reputation of the Company/Management.
 - (viii) Loss of goodwill and loss of reputation.
 - (ix) Threat to Airport security by entering into the IGI Airport when not on duty.
3. The charges levelled against the workman were based on documentary record viz. CCTV footage/photographs and statements of eyewitnesses during the period of wild cat unjustified, unwarranted, uncalled for and unlawful strike resorted to by the employees on being incited and instigated by the workman and other union leaders to resort to the aforesaid illegal strike which seriously affected the operational work of the Company besides causing financial loss of over Rupees one crore.
4. On being incited and instigated by the union viz. Cambata Aviation Karamchhari Union (Regd.), a mob of 150 to 200 unruly and agitated employees of the company had gathered on 03 September 2014 at the Corporate Office of the Company situated at unit 9 and 9A III Floor, Vasant Square Mall, Vasant Kunj, New Delhi and again in the offices of Asstt. Labour Commissioner (Central) and Regional Labour Commissioner (Central) situated on the IV Floor, Jeevan Deep Building, Parliament Street, New Delhi on 15 September 2014. The said mob was throughout present inside and outside the offices of ALC and RLC (Central) since the morning of 15.09.2014 till the Settlement was signed late on the night of 15/16 September 2014 at about 3.30 a.m. between the Management and the Union under tremendous pressure. Apprehending that a similar situation might arise at the time of conducting domestic enquiry against the workman, the competent disciplinary authority decided to dispense with

the domestic enquiry, as it was not considered practicable to conduct the enquiry against the workman in the then prevailing situation. The competent authority was also of the view that in view of the gravity of the charges against the workman, his continuation in service would not be in the interest of the Company.

5. Accordingly, as per the decision of the competent Disciplinary Authority, the workman was awarded the penalty of his removal from the services of the company w.e.f. 22 April 2015 vide Management's letter No. CAPL/PER/1492/2015 dated 22 April 2015 (Ex MW1/32).
6. The workman was duly paid one month's gross wages amounting to Rs. 13,416/- (Rupees thirteen thousand four hundred and sixteen only) by transferring the said amount to his salary account No. 00292041018544 with the Oriental Bank of Commerce, Mahipalpur Branch, New Delhi on 22 April 2015 as required under the provisions contained in Section 33(2)(b) of the Industrial Disputes Act, 1947.
7. However, in case the Hon'ble Tribunal comes to the conclusion that holding of domestic enquiry against the workman ought to have been held and is necessary, in that event, it is submitted that the Management may kindly be permitted to adduce the relevant evidence against the workman before this Hon'ble Tribunal with a view to sustain the charges levelled against and the order of penalty imposed upon the workman.
8. Since an I.D No. 122/2012 raised by Cambata Aviation Karamchari Union regarding payment of DA/VDA was sub-judice before this Hon'ble Tribunal, the Management simultaneously filed an application before this Hon'ble Tribunal on 22 April 2015 for approval of its action of awarding the penalty of removal from service to the workman as required under the provisions contained in Section 33(2)(b) of the I.D. Act, 1947.
9. It is stated, that the order of removal from service issued to the workman vide letter No. CAPL/PER/1492/2015 dated 22 April 2015 (Ex MW1/32) is in relation to a misconduct not connected with the Industrial Dispute No. 122/2012.

In view of the above, it is respectfully prayed that necessary approval sought under Section 33(2)(b) of the I.D. Act 1947 in respect of the action of the Management may kindly be accorded.

My issue wise finding is as follows:-

Finding on Issue No. 1

Burden to prove issue no.1 lies on management of Cambata Aviation. To prove this issue management of Cambata Aviation produced MW1 Sh. C.S. Madan who tendered his affidavit alongwith documents but he was not cross-examined on behalf of workman. Thereafter testimony of Sh. C.S. Madan is unrebutted. Hence comes within reliable and credible evidence. Which is sufficient to prove issue no. 1. Hence Issue No. 1 is liable to be decided in favour of management of Cambata Aviation and against workman.

Which is accordingly decided.

Finding on Issue No. 2

Burden to prove that application of Cambata Aviation 33(2)(b) of the ID.Act , 1947 is not maintainable lies on workman Sh. Satpal. But in the instant case he has not adduced any evidence. So inwant of evidence of workman issue No. 2 is liable to be decided against workman and in favour of management Cambata Aviation. Which is accordingly decided.

Finding on Issue No. 3

Burden to prove issue no. 3 lies on workman. But he adduced no evidence on issue no. 1 &2. Which have already been decided against workman. Moreover issue No. 3 is relating to relief to workman. Which is also liable to be decided against workman and in favour of management of Cambata Aviation on the basis of cogent and reliable evidence of management. Which is accordingly decided.

On the basis of aforesaid discussion I am of considered view that application of management of Cambata Aviation u/s 33(2)(b) ID. Act , 1947 is liable to be allowed. Which is accordingly allowed and this Tribunal approves action of management of awarding of penalty of removal of workman Sh. Satpal from services of management.

Ex-parte Award is liable to be passed in favour of management of Cambata Aviation . Which is accordingly passed.

Dated: 30-1-2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 4 जुलाई, 2017

का.आ. 1619.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतोय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट (संदर्भ संख्या 23/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2017 को प्राप्त हुआ था।

[सं. एल-12012/13/2008-आई.आर. (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 4th July, 2017

S.O. 1619.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Bhubaneswar as shown in Annexure, in the industrial dispute between the management of State Bank of India and their workman, received by the Central Government on 04.07.2017.

[No. L-12012/13/2008-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR****Present :**

Shri B.C. Rath, Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 23/2008**Date of Passing Award – 19th May, 2017****Between:**

The Branch Manager,
State Bank of India,
Jajpur Road Branch,
At./Po. Jajpur Road, Dist. Jajpur, Orissa.

...1st Party-Management**(And)**

Shri Sashidhar Jena,
Qrs. No. VR-5/1, Kharvela Nagar,
Unit-III, Bhubaneswar, Orissa.

...2nd Party-Workman**Appearances:**

Shri Alok Das,
Authorized Representative

...For the 1st Party-
Management

None

...For the 2nd Party-
Workman**AWARD**

This award arises out of a reference with the following schedule:—

“Whether the action of the management of State Bank of India in relation to their Jajpur Road Branch in terminating the services of Shri Sashidhar Jena w.e.f. 30.09.2004 without complying provisions of the I.D. Act, is legal and justified? To what relief is the entitled? made by the Government of India, Ministry of Labour & Employment in exercise of the powers conferred by clause (d) of Sub-section (1) and sub-section (2A) of Section

10 of the Industrial Disputes Act, 1947 vide letter No. L-12012/13/2008 – IR(B-I), dated 14.05.2008 in the event of a dispute allegedly arisen between the Management of State Bank of India and their workman.

2. Shorn of unnecessary details the case of the 2nd party-workman is that being empanelled by the Management-Bank after a selection he was engaged as a messenger on casual and daily wage basis with effect from 20.8.1983 in the branch office of the Management-Bank at Jajpur. He worked as such there from 20.8.1983 to 30.9.2004 continuously and uninterruptedly. Though he worked for more than 240 days in the branch of the Management-Bank at Jajpur he was removed from service on 30.9.2004 without compliance of the provisions of Section 25-F of the I.D. Act. His alleged termination being illegal and unjustified on account of contravention of the provisions of Section 25-F of the I.D. Act he is to be reinstated with all back wages and other consequential service benefits including continuity of service.

3. The Management-Bank has contested the claim of the disputant workman taking a stand that the disputant's engagement was temporary and on need basis. He was engaged intermittently as a casual labourer on daily wage basis as and when required. His engagement was never continuous for 240 days in a year. Taking into consideration of a settlement reached out between the Management of State Bank and Staff Federation an interview of temporary/daily wagers like the disputant engaged in different branches of the Bank in Odisha were held for preparing a panel of such daily wagers so as to enable the Management-Bank to absorb them as temporary/intermittent daily wagers in 4th grade cadre of the Management-Bank. The unsuccessful candidates had also raised a dispute through the Union which ultimately resulted in registration of I.D. Case No. 48/2008 pending for disposal in this Tribunal and as such the present one is not maintainable. The disputant became unsuccessful in the said interview and as such he could not be empanelled for his absorption in the 4th grade cadre of the Management-Bank. The disputant cannot be said to be a "workman" of the Management-Bank as defined under the Act and as such the dispute raised by him is not maintainable in the eye of law. That apart, it has been averred that the disputant and other daily wagers like him had preferred a Writ before the Hon'ble High Court of Orissa for their permanent absorption in different establishment of the Management. The said writ having been dismissed by the Hon'ble High Court and Special Leave Petition against such order of the Hon'ble High Court having been dismissed by the Hon'ble Apex Court the present reference is also bad in the eye of law. There being no continuous engagement of 240 days of the disputant no relief can be extended to him under the I.D. Act and as such, the claim of the disputant is to be rejected out-rightly.

4. On the aforesaid pleadings of the parties following issues have been framed for adjudication of the dispute.

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before the Tribunal on the same issue is legal and justified?
2. Whether the workman has worked for more than 240 days as enumerated under section 25-F of the Industrial Disputes Act?
3. Whether the action of the Management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Shri Sashidhar Jena with effect from 30.9.2004 without complying the provisions of the I.D. Act, 1947 is legal and justified?
4. To what relief is the workman concerned entitled?
5. It is pertinent to mention here that the 2nd party-workman failed to adduce any evidence and he did not take any step after settlement of issues. When he did not come forward to adduce any evidence despite several adjournments of the hearing the Management was directed to adduce its evidence. The Management has examined Shri Ramesh Chandra Parida a M.W.-1 and filed documents like Settlements dated 17.11.1987, 16.7.1988, 27.10.1988, 09.01.1991, 30.07.1996, order of the Hon'ble High Court passed in O.J.C. No. 2787/1997, Judgement of the Hon'ble Supreme Court in S.L.P. No. 3082/1999, letter dated 2.8.2004 of the SBI Temporary 4th grade employees Union along with list, letter dated 22.11.2004 of R.L.C.(C) Bhubaneswar, copy of the minutes of closure recorded by the Dy. C.L.C.(C), report of the conciliation dated 29.6.2007 sent by Dy. C.L.C.(C0 which are marked as Ext.- A to J.
6. Law is well settled that In order to succeed in a dispute raised under section 25-F of the I.D. Act burden lies on the workman to establish that he was appointed/engaged by the employer and his engagement was continuous and uninterrupted for more than 240 days in a year preceding to the alleged removal/dismissal/retrenchment/termination of service. Unless the same is established by any clinching and credible evidence the burden cannot be shifted to the Management to establish that he was never engaged for a period of 240 days continuously and uninterruptedly. Be that as it may, there is nothing on record except the assertions made by the disputant workman to hold that he was ever engaged by the Management in any of its branch in any period of time and his such engagement was continuous and uninterrupted for more than 240 days in a year preceding to his alleged removal/dismissal/termination/retrenchment. On the other hand, the uncontroverted testimony of M.W.-1 and the

documents relied upon by the Management reveal that an interview of casual/daily wagers engaged in various branches of the Management-Bank was held and a panel was prepared for absorption of those daily wagers against the 4th grade cadre of posts. A writ was preferred before the Hon'ble High Court by certain unsuccessful candidates for their absorption and the said writ having been dismissed and Special Leave Petition against such order of the Hon'ble High Court having been dismissed by the Hon'ble Apex Court the matter of absorption of the disputant workman is set at rest. So far any relief under section 25-F is concerned, the disputant workman has failed to adduce any evidence as a result of which this Tribunal has no other alternative than to reject the claim made in the statement of claim by the disputant.

7. Reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 4 जुलाई, 2017

का.आ. 1620.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 369/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2017 को प्राप्त हुआ था।

[सं. एल-12012/217/2000-आई.आर. (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 4th July, 2017

S.O. 1620.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 369/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Bhubaneswar as shown in Annexure, in the industrial dispute between the management of State Bank of India and their workman, received by the Central Government on 04.0.2017.

[No. L-12012/217/2000-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

Tr. INDUSTRIAL DISPUTE CASE NO. 369/2001

Date of Passing Award – 26th May, 2017

Between:

The Assistant General Manager,
State Bank of India, Region-II,
Zonal Office, Sambalpur,
Dist. Sambalpur – 768 001 Orissa.

...1st Party-Management

(And)

Shri Ramesh Chandra Sahu,
At. Maltigunderpur, Po. Gunderpur,
Dist. Smabalpur, Orissa – 768 001.

...2nd Party-Workman

Appearances:

M/s. S.M. Dwebedi
Advocate
None

...For the 1st Party-
...Management.
...For the 2nd Party-Workman

AWARD

The Government of India in the Ministry of Labour exercising its jurisdiction under section 10 of the I.D. Act have referred the dispute arose between the management of State Bank of India and Shri Ramesh Chandra Sahu vide letter No. L-12012/217/2000/IR(B-I), dated 16.10.2000 for its adjudication with the following schedule.

“Whether the action of the State Bank of India, Sambalpur Division terminating the services of Shri Ramesh Chandra Sahu, canteen boy from May, 1998 without any notice and following the provisions of the I.D. Act is justified? If not, what relief the workman is entitled to?”

2. Briefly stated the case of the individual workman as appears from his claim statement is that he was engaged by the Branch-Bank of the Management at Khetrajpur, Sambalpur on daily wage basis from October, 1991 to October, 1992 to work as a Messenger. Thereafter the Branch Manager, Khetrajpur deputed him to the branch of the Management-Bank at Malatigandarpur to work as a canteen boy. He worked there as such from November, 1992 to April, 1997. Thereafter when he was refused engagement under the Management, he raised a dispute before the labour machinery resulting in the reference as mentioned earlier.

3. Being noticed the Management-Bank has contested the claim taking a plea that the disputant was never engaged in any capacity for doing messengerial work. His engagement/employment, if any, was never continuous for more than 240 days in a twelve calendar months preceding to the alleged termination of service. His employment was only on temporary and daily wage basis as and when required and it was intermittent. Being a Public Undertaking any appointment of regular or temporary in nature are being made with conformity to the recruitment rules and circular. The disputant not being a “workman” of the Management-Bank as defined under section 2(s) of the I.D. Act, the reference is not maintainable. Hence, prayer has been made for rejection of the statement of claim.

4. On the aforesaid pleadings of the parties the following issues are to be examined and answered for proper and just adjudication of the dispute.

ISSUES

1. Whether the action of the State Bank of India, Sambalpur Division terminating the services of Shri Ramesh handra Sahoo, Canteen Boy from May, 1998 without any notice and following the provisions of the Industrial Dispute Act is justified?

2. If not, to what relief the workman is entitled to?

5. The 2nd party-disputant has examined himself and relied upon Xerox copies of the certificates granted in regard to number of days working under the management, complaint to Assistant Labour Commissioner (Central), Rourkela and xerox copy of cheque dated 29.9.1992 marked as Ext.-1 to 4 to substantiate his claim whereas, the Management has examined his Branch Manager, Khetrajpur Branch as M.W.-1 to deny the claim.

FINDINGS

6. Since both the issues are inter-related to each other they are taken up together for the sake of convenience.

As per the pleadings and oral testimony of the disputant, he was engaged in the branch of the Management-Bank from 1991 to 1992 and thereafter his Branch Manager shifted him to work as a Canteen Boy at Khetrajpur Branch of the Management’s canteen and he was refused employment in the year 1997. He has claimed to have worked for more than 240 days continuously and in support of such claim he has filed Xerox copies of certificates stated to have been issued by the Branch Manager of Khetrajpur branch. On close examination of these certificates it is emerging that he was engaged from October, 1991 to June, 1992 and worked 208 days in between those period and thereafter he was again engaged on daily wage basis in August & October for 39 days. Other documents are apparently self created, no other document including any appointment letter of the Management is filed to show the nature of his appointment, if any, and the wages paid to him for such engagement. On a close scrutiny of the Xerox copy of the certificates purportedly issued by the Branch Manager, it is seen that his engagement under the Management-Bank is no way continuous for 240 days in a twelve calendar months preceding to his alleged termination in October in 1992. Thus, there is no other document to support the assertion of the workman that he was given appointment either on regular or temporary basis or on daily wage basis for a continuous period of 240 days to work as a Messenger. It is well settled that in case of termination of service of temporary/regular worker, it is for the workman and not for the department to prove that he had completed 240 days of work in the twelve calendar months preceding to the date of alleged termination. In that view of the matter the disputant workman appears to have failed to adduce any clinching and credible evidence to show that he was working for more than 240 days in the preceding one year prior to his alleged removal except his oral assertion. When the disputant workman himself has failed to discharge his onus the Management is not required to establish that the workman was never engaged for more than 240 days continuously in a twelve calendar months. Mere affidavit or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The principles set out by the Hon’ble Apex Court further lay down that mere non-production of muster rolls per say without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an

adverse inference against the Management. The disputant workman did not make any prayer to call for the records of the Management including the muster rolls or any register to establish that he worked in the Management-Branch for more than 240 days and he received wages for such engagement for more than 240 days. In absence of any clinching and credible evidence regarding nature of appointment/engagement given to the disputant workman and the period of his appointment/engagement, it cannot be held that provisions of Section 25-F has been violated in the instant case rendering the alleged removal as illegal and unjustified.

7. For the reasons stated above the alleged removal of the disputant workman with effect from 1.6.1998 cannot be held illegal and unjustified and no relief can be extended to the disputant workman.

8. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 4 जुलाई, 2017

का.आ. 1621.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट (संदर्भ संख्या 54/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2017 को प्राप्त हुआ था।

[सं. एल-12012/23/99-आई.आर. (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 4th July, 2017

S.O. 1621.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Bhubaneswar as shown in Annexure, in the industrial dispute between the management of State Bank of India and their workman, received by the Central Government on 04.07.2017.

[No. L-12012/23/99-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

Tr. INDUSTRIAL DISPUTE CASE NO. 54/2001

Date of Passing Award – 19th May, 2017

Between:

1. The Branch Manager,
State Bank of India,
Babunikitimal Branch, Po. Babunikitimal,
Sambalpur – 768 001.

2. The Zonal Manager,
State Bank of India, Region-II,
Po./Dist. Sambalpur.

...1st Party-Managements

(And)

Shri Gadadhar Sahu,
C/o. Stabadi Sahu, Sakhipara,

Sambalpur, Dist. Sambalpur – 768 001

...2nd Party-Workman**Appearances:**

M/s. S. M. Dwebedi,
Advocate.
None

...For the 1st Party- Managements...For the 2nd Party-Workman**AWARD**

The Government of India in the Ministry of Labour exercising its jurisdiction under section 10 of the I.D. Act have referred the dispute arisen between the management of State Bank of India and Gadadhar Sahu vide letter No. L-12012/23/99/IR (B-I) dated 10.05.1998 for its adjudication with the following schedule:-

Whether action of the Management of State Bank of India of India, Sambalpur in removing from the services of Shri Gadadhar Sahu, Ex-Messenger, SBI, Babunikitimal Branch w.e.f. 1.6.1998 is justified? If not, what relief he is entitled?"

2. Briefly stated, the case of the individual workman as comes out from his statement of claim, is that he was engaged by the Management-Bank as a temporary Messenger intermittently in its branch-Bank of Nikitimala at Kuchinda prior to the year 1994. By virtue of a settlement between the Management of SBI and its Staff Federation, it was decided to prepare a panel from which Messengers are to be recruited or engaged permanently or temporarily on daily wage basis in different branches of the Management-Bank and accordingly an interview was held in May, 1996 by the Management-Bank. It has been claimed that the disputant workman was selected in the said interview and empanelled as a candidate for such appointment of Messengers either as on regular or temporary basis. He was given appointment as a temporary Messenger on daily wage basis in the branch of Babunikitamala Branch, Sambalpur and he worked as such from May, 1996 to 31.5.1998. It is his further stand that he was working as such continuously and uninterruptedly for more than 240 days in a year preceding to his alleged removal on 01.06.1998 without compliance of the provisions of Section 25-F of the Act. Hence his removal being contrary to the provisions enumerated under section 25-F of the Act he is to be reinstated with all back wages and consequential reliefs including continuity of service.

3. Being noticed the Management-Bank has contested the claim of the disputant workman taking a stand that he was never appointed as a regular or temporary Messenger for a period of more than 240 days continuously and uninterruptedly in any of its branch. His appointment was only intermittent as and when required in the branch-Bank of the Management. He was paid on daily wage basis when he was engaged intermittently. It has been further pleaded by the Management that taking into consideration the settlement reached out between the Management of State Bank and its Staff Federation, an interview of temporary/daily wagers like the disputant engaged in different branches of the Management-Bank situated in different circles were held for preparing a panel of such daily wagers so as to enable the Management-Bank to absorb/appoint them in regular basis or temporarily in 4th grade cadre of the Management-Bank. As per the said settlement all the vacant messengerial posts in the cadre was to be filled up by 31.3.1997 on which date the panel would be lapsed. The branches of the Management-Bank were advised to engage messengers either temporarily or on daily wage basis only from the wait list of the panel. The candidates securing higher position in the panel were appointed against the vacant post of regular Messengers, whereas other successful candidates in the panel were given appointment on temporary and daily wage basis in different branches as and when required. Accordingly the disputant workman was engaged temporarily on daily wage basis in Babunikitimala branch intermittently as and when required. He never completed 240 days continuously prior to the preceding calendar months of his alleged removal on 01.06.1998. The validity of the panel having been lapsed on 31.3.1997 as per the settlement between the parties, the service of the disputant workman could not be regularized and no illegality has been committed in discontinuing the service of the disputant workman with effect from 1.6.1998.

4. On the aforesaid pleadings of the parties the following issues are to be answered for proper and just adjudication of the dispute.

ISSUES

1. Whether the action of the Management of State Bank of India, Sambalpur, in removing from the services to Shri Gadadhar Sahu, Ex-Messenger, SBI, Babunikitiamala Branch with effect from 1.6.1998 is justified?
2. If not, what relief he is entitled?

5. The 2nd party-workman has examined himself as a witness and relied upon two documents like Xerox copy of bank pass book and Xerox copy of interview call letter (marked as Ext.-1 and 2) to substantiate his claim, whereas, the Management adduced oral as well as documentary evidence to deny the claim of the disputant workman. Copies of the settlements dated 17.11.1987, 16.07.1988, 27.10.1988, 09.01.1991 and 30.07.1996 have been filed in support of its averments.

FINDINGS

6. Since both the issues are inter related to each other they are taken up together for consideration for the sake of convenience.

As per the pleadings and oral evidence of the disputant workman his removal from the service of the temporary messenger with effect from 01.06.1998 was illegal on account of non-compliance of the provisions enumerated in Section 25-F of the Act. It has been alleged that he was terminated from service without being paid notice pay and compensation despite the fact that he was appointed and engaged by the branch of the Management-Bank in the month of May, 1996 and he continued in his job without any interruption till he was removed on 01.06.1998. Having worked for more than 240 days continuously and uninterruptedly in the branch of the Management-Bank in a calendar year preceding to his alleged removal he was required to be paid notice pay and compensation. Since the Management has failed to comply the same while removing him from service, he is to be reinstated with full back wages. In support of his averment about his appointment and continuance in service he has filed Xerox copies of S.B. Bank pass book and interview call letter. Both the documents are not sufficient to establish that he was ever appointed as a temporary messenger continuously for more than 240 day in the preceding twelve calendar months before his removal. The particulars of the S.B. A/c. pass book of the disputant workman is not specific to lead an inference that amount credited in S.B. Account from time to time was towards his daily or monthly wages received from his employer-Bank. Such statements do not disclose that his engagement, if any, was continuous for more than 240 days in a calendar year preceding to his removal. The other document is related to the call letter issued to him to attend the interview held for the purpose of empanelment of successful candidates for appointment in the 4th grade cadre in the Bank either in regular or temporary or daily wage basis. The same is not sufficient to support the assertions of the workman that he was given appointment either on regular or temporary basis in the 4th grade cadre for a continuous period of 240 days. It is well settled that in case of termination of service of temporary/regular worker it is for the workman and not for the department to prove that he had completed 240 days of work in the twelve calendar months preceding the date of alleged termination. In that view of the matter the disputant workman appears to have failed to adduce any clinching and credible evidence to show that he was working for more than 240 days in the preceding one year prior to his alleged removal except his oral assertion. When the disputant workman himself has failed to discharge his onus, the Management is not required to establish that the workman was never engaged for more than 240 days continuously in a twelve calendar months. Mere affidavit or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The principles set out by the Hon'ble Apex Court further lay down that mere non-production of muster rolls per say without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the Management. The disputant workman did not make any prayer to call for the records of the Management including the muster rolls or any register to establish that he worked in the Management-Branch for more than 240 days and he received wages for such engagement for more than 240 days. In absence of any clinching and credible evidence regarding nature of appointment/engagement given to the disputant workman and the period of his appointment/engagement it cannot be held that provisions of Section 25-F has been violated in the instant case rendering the alleged removal as illegal and unjustified.

7. For the reasons stated above the alleged removal of the disputant workman with effect from 1.6.1998 cannot be held illegal and unjustified and no relief can be extended to the disputant-workman.

8. The reference is answered accordingly.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 4 जुलाई, 2017

का.आ. 1622.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स राईट्स लि.के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 68/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2017 को प्राप्त हुआ था।

[सं. एल-41012/59/2011-आई.आर. (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 4th July, 2017

S.O. 1622.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Bhubaneswar as shown in Annexure, in the industrial dispute between the management of M/s. Rites Ltd. and their workman, received by the Central Government on 04.07.2017.

[No. L-41012/59/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 68/2012

Date of Passing Award – 19th May, 2017

Between:

1. M/s. Durga Engineering, Contractor,
D-105, B-Colony, VTPS, Ibrahim Patnam,
Dt. Krishna (A.P.)

2. The Managing Director,
RITEs Bhawan, Plot No. 1,
Sector-29, Gurgaon – 122 001.

...1st Party-Managements

(And)

Shri K.K. Khuntia,
S/o. Shri Khetrabasi Khuntia,
At. Kangeila, P.S. Pippala,
At Kamakshya Nagar, Dhenkanal.

...2nd Party-Workman

Appearances:

None

...For the 1st Party-Managements

Shri K.K. Khuntia

...For Himself the 2nd Party-Workman

AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of Contractor to the management of Contractor of M/s. RITES Ltd. and their workman in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act vide its letter No. L-41012/59/2011-IR (B-I) dated 15.06.2012 with the following schedule.

“Whether the action of the management of M/s. Durga Engineering, a contractor of M/s. RITES Ltd., in terminating the services of Shri K.K. Khuntia w.e.f. 4.12.2010 is legal and justified? To what relief the workman is entitled?”

In short the case of the disputant workman is that being appointed through the Management No. 1, Contractor he worked as a Peon with effect from January, 2008 to the month of December, 2010. He was discharging his duties with all sincerity and devotion to the satisfaction of his authority. He was receiving his wage on monthly basis except in some occasion in a quarter. He was extended with E.P.F. and E.S.I. facility. Though he was shown to have been engaged as a contract labourer of the Management No. 1, he was under the direct control and supervision of the Management No. 2. His wage was paid by the Management No. 2. His engagement through contractor was a paper transaction only and the said document was a sham and camouflage to deny his claim. According to him his service was terminated on 3.12.2010 without compliance of the provisions of Section 25-F of the I.D. Act and as such, his termination/retrenchment by the Management No. 2 is illegal and unjustified and as such, he is to be reinstated with back wages and other service benefits.

2. As both the Managements did not appear and contest the claim of the disputant workman after being noticed by the Tribunal, they have been set exparte. The disputant workman has filed his evidence in shape of sworn affidavit as contemplated under Order 18 Rule 4 C.P.C. and exhibited the note dated 3.9.2010 of the Management, another note dated 12.3.2008 of the Management, letter of M/s. Durga Engineering Contractor, details of the payments in acquittance, statement for payment of Bonus to the contractual staff and copies of the savings Bank pass book marked as Ext.-1 to 6 in support of his claim.

3. In his oral testimony the disputant workman has claimed that he was working directly under the control and supervision of the Management No. 2 though, he was being shown engaged as a contract labourer of the Management No. 1 and he was paid directly by the Management No. 2 towards his monthly wage. To strengthen his contention and oral testimony reliance has been placed on the Xerox copy of a note allegedly submitted by one Shri P.C. Pattnaik of Management No. 2 and a Xerox copy of letter of the Project Manager dated 12.03.2008. Besides, a Xerox copy of letter alleged submitted by the Management No. 1 addressed to the Management No. 2 is also filed in support of the claim of the disputant workman. On a close scrutiny of Ext.-1 it appears that one Sushil Chanda Majhi and the disputant workman K.K. Khuntia were paid from the NTPC Simadri Project Fund being employed on contractual basis. Note appears to have been given by the signatory of Ext.-1 to his higher authority for approval of a proposal to accommodate both the above contractual workers in view of coming projects as their term of contractual work was going to expire on 30.9.2010. The other letter Ext.-2 discloses about sanction of certain amount towards wage of disputant workman and two others for the month of January, 2008. These two documents as well as Ext.-3 do not disclose in certainty that the Management No. 2 had issued any appointment letter to the disputant workman or there was any direct relationship “employer and employee” between them. On the other hand it can be safely inferred from Ext.-1 that the term of contractual work was going to expire on 30.9.2010 for which a proposal seems to have been made by the signatory Ext.-1 for an approval of extension of contractual work to the disputant workman and another in certain up-coming projects. No other document allegedly issued by the Management No. 1 is filed to establish that the disputant workman was given any form of appointment either temporarily or on regular basis. In the above back-drop, if the contention of Ext.-1 is taken into consideration it can be at best inferred that the contractual appointment of the disputant workman was a time bound i.e. up to 30.09.2010. It is well settled by the Hon’ble Apex Court in a catena of decisions that when an appointment is for a specific period or the job is a contractual one for a specific time, no relief can be extended under section 25-F of the Act if there is no extension of time to such contractual engagement or the workman was retrenched after completion of the contractual period.

4. Further, it cannot be over-looked that the disputant workman has pleaded that he was engaged in the Management No. 2 being shown as a contract labourer of Management No. 1 and paper transactions showing his such engagement are sham and camouflage to avoid the liability of the Management No. 2. It is his further claim that he was working directly under the supervision and control of Management No. 1 and his retrenchment with effect from 01.10.2010 without compliance of the provisions of Section 25-F is illegal and unjustified and in that view of the matter the principal employer is required to reinstate him with all full back wages and other service benefits. To strengthen his contention reliance has been placed in the case of General Manager (OSD), Bengal Nagpur Cotton Mills Rajnandgaon –versus- Bharat Lal & Another reported in 2011 (1) O.J.R. 326. As per the above pronouncement of the Hon’ble Apex Court two well recognized tests to find out whether the contract labour is the direct employee of the principal employer are (i) whether the principal employer pays the salary instead of the contractor and (ii) whether the principal employer controls and supervises the work of the employee. There is not a single scrap of paper on behalf of the disputant workman to show that he was receiving the wage directly from the Management No. 2. On the other hand Ext.-3 suggests that he was receiving salary from the Management No. 1. That apart, no appointment letter or offer of appointment/engagement is filed to ascertain if he was engaged directly by the Management No. 1. No document is also filed with regard to payment of wages to him directly by the principal employer, Management No. 2. In regard to the above tests it is for the workman to aver and prove that he was paid salary directly by the Management No. 2 and not by the Management No. 1-Contractor. The above onus is not discharged by the disputant workman. Hence the

disputant workman has also failed to establish the existence of “employer and employee” relationship between him and the Management No. 1.

5. For the reasons mentioned above it cannot be said that there was any retrenchment of service of the disputant workman by the Management No. 2 against whom all reliefs have been claimed. So far as the liability of the Management No. 1 is concerned it is seen from Ext.-1 that the nature of engagement was time bound and no other document towards appointment is filed to suggest that the engagement of the disputant workman was not time bound. Unless the appointment is not a time bound one, no relief under section 25-F can be granted to a workman holding his retrenchment or termination as illegal. Thus, claim raised by the disputant workman merits no consideration.

6. Accordingly the reference is answered.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 4 जुलाई, 2017

का.आ. 1623.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 05/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2017 को प्राप्त हुआ था।

[सं. एल-12012/181/2004-आई.आर. (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 4th July, 2017

S.O. 1623.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Lucknow as shown in Annexure, in the industrial dispute between the management of State Bank of India and their workman, received by the Central Government on 04.07.2017.

[No. L-12012/181/2004-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : Rakesh Kumar, Presiding Officer

I.D. No. 05/2005

Ref. No. L-12012/181/2004 IR(B-I) dated 28.12.2004

BETWEEN :

Sri Ram Kripal S/o Late Sh.Jitai Ram
Village & Post Atrauliya,
Distt. Azamgarh (U.P.)
Azamgarh

AND

1. The Branch Manager,
State Bank of India, A.D.B.Siswa Bajar,
Maharaganj, U.P.
Gorakhpur
2. The Regional Manager,
State Bank of India.
Zonal Office, Town Hall, Gorakhpur
Gorakhpur

AWARD

1. By order No. L-12012/181/2004-IR(B-I) dated 28.12.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Sri Ram Kripal S/o Late Sh. Jitai Ram, Azamgarh and the Branch Manager/Regional Manager, Gorakhpur for adjudication.
2. The reference under adjudication is:
“WHETHER SRI RAM KRIPAL, THE EX-EMPLOYEE OF SBI, DESIGNATED AS CASH OFFICER IS A WORKMAN? IF YES, WHETHER CLAIM TO HAVE BEEN ILLEGALLY REMOVED FROM THE SERVICE W.E.F. 27.7.1994 BY THE MANAGEMENT OF SBI IS TENABLE? IF SO, TO WHAT RELIEF HE IS ENTITLED FOR?”
3. As per claim statement W-3 the petitioner has stated in brief that he was appointed as Clerk on 29.3.1973 at SBI, Kopaganj, Azamgarh branch, was promoted to the post of JMGS-I on 3.2.1982, and was transferred to SBI, Siswa Bazar, Gorakhpur, where he was assigned the work of “Cash Officer”, he used to perform all the clerical work, after counting the cash, entry was properly made in the relevant register, no administrative and managerial power was vested to him, neither he possessed any supervisory rights. The workman has pleaded that his job was covered under the definition of workman as provided in the I.D. Act. He has alleged that his services were illegally terminated on 27.7.94, at the time of termination he was drawing Rs.5690/- per month.
4. The petitioner has asserted that before his termination he had worked for more than 240 days, his employers have illegally recovered the sum of Rs.27000/- from his salary without assigning any reason. Gratuity has also not been paid. No prior notice was given, neither salary in lieu of notice was paid, retrenchment compensation was also not paid, violation of Section 25F of the I.D. Act. and relevant Rules have been alleged in the claim statement. The workman has stated that several representations were made by him but none was disposed neither any reply was given. With the aforesaid pleadings request has been made to declare the service termination as illegal and to reinstate him with continuity in service alongwith salary benefits, cost of the litigation etc.
5. The management has filed reply/written statement M-9 wherein it has been admitted that the petitioner was appointed as Clerk on 29.3.1973, promotional matter has also been accepted. The opposite party has further stated that after his promotion the petitioner no longer remained a workman within the definition provided in the I.D. Act., his service condition was changed by the SBI Supervisory Staff Service Rules. The opposite party has alleged that during his posting as Cash Officer at Kopaganj, Azamgarh branch the petitioner has committed certain acts of gross misconduct during his duty. Thereafter he was placed under suspension, charge sheet was also issued, departmental proceedings were initiated and after giving due opportunity to the workman the matter was duly considered, enquiry report was submitted, the Disciplinary Authority has thereafter recommended his removal from service, the appointing authority passed an order dated 19.6.1992 thereby removing the workman from service of the opposite party Bank.
6. The opposite party has stressed that after lapse of more than 12 years the petitioner had approached the office of ALC(C) Allahabad, raised the dispute there although the appeal was preferred by him on 19.6.1992 before the Dy.Managing Director (P)/Appellate Authority, Mumbai, the said appeal was decided on 7.6.1993 and the letter was received by the petitioner on 7.10.93. Relevant paras of the claim statement having certain allegations, have been denied by the opposite party. The management has asserted that the petitioner during his tenure as Cash Officer had afforded credit on various dates for amounts aggregating Rs.28,017/- in the Saving Account no.3326 and 3986 in the name of minor son Anil Kumar under his guardianship and his wife Smt. Phoolmati, the amount was withdrawn by him or his wife, he has defrauded the bank by making fictitious entries in the aforesaid account, he prepared TDR voucher for Rs.1100/- on 16.5.88 and credited in wife's account, he altered in the TDR register which was in the name of Sri Bali Chandra Singh, who had already paid interest on 3.5.88. The petitioner has embezzled the bank's fund and penalty of removal from service was imposed, appeal was duly disposed of. The management in the light of the above pleadings has requested to reject the claim statement alongwith heavy cost. Several documents have been annexed with written statement by the opposite party.
7. With strong denial of the allegations leveled in the written statement rejoinder W-17 has been filed by the petitioner, reiterating the facts mentioned in the claim statement. The alleged embezzlement etc. has been denied by the petitioner.
8. The petitioner has filed his affidavit in the evidence. He has been thoroughly cross examined on behalf of the management.
9. The management has filed affidavit M-26 of Sri Nanhe Prasad, Branch Manager, SBI. He has been cross examined on behalf of the workman.
10. Arguments of both the parties have been heard at length, and record has been scanned thoroughly.
11. Learned AR for the workman has relied upon the following Rulings:

1. (2000) 1, SCC, Madan Pal vs State of UP, page 683.
2. (2014) 4, UPLBEC, Standard Chartered Bank vs PO, CGIT and others page 3412 Hon'ble Allahabad High Court.
3. (2007) (3) UPLBEC, Sri Baidyanath Ayurvedh Bhawan, vs PO, Industrial Tribunal page 2248. Hon'ble Allahabad High Court.
4. 1986(52) FLR Arkal Govin Raj Rao vs Ciba Geiy of India Ltd. Bombay page 19, Hon'ble Supreme Court.
5. FLR 1988 (56) Page 323, SC, Chandrama Tewari Vs Union of India, Page no.327.
6. FLR 1998 (78) page 19 Hon'ble Allahabad High Court, Director, Rajya Krishi Utpadan Mandi Parishad vs State Service Tribunal..
7. LLJ 1973 (1) Page 414, SC, Ghanshyam Dass Srivastava vs State of M.P.
8. FLR, 1998 (80); State of UP vs Shatrughan Lal & others; Hon'ble Supreme Court.

12. Learned AR for the management has submitted that the aforesaid citations do not apply to the facts of the present case.

13. It is an admitted fact to both the parties that the petitioner workman was appointed as Clerk on 29.3.1973 at SBI, Kobaganj, Azamgarh, and later on was promoted. The workman has stressed that his services have wrongly been terminated without assigning any reason, his representation was not considered and no retrenchment- compensation was paid to him. Learned AR for the management while refuting the above submissions has emphasized that the petitioner has embezzled the funds, indulged into illegal activities, certain sum was unauthorizedly credited in the accounts of petitioner's wife and minor son, thereby being indulged in gross misconduct. It has further been argued by the management that after thorough and fair enquiry, the workman was awarded with punishment of removal from service; appeal filed by him was also dismissed.

14. In the written statement, M-9 filed by the management specific instances regarding so called embezzlement and mis-appropriation of funds have been mentioned. No doubt the allegations leveled in the written statement have been denied in the rejoinder W-17 but specific pleadings have not been made by the workman. No details regarding the alleged accounts of petitioner's wife and minor son have been elaborated by the workman.

15. The management witness Sri Nanhe Prasad, Branch Manager, SBI has filed affidavit M-26. Following abstract of para 7 of the affidavit M-26 is quite material;

"During his tenure as Cash Officer, the claimant Sri Ram Kripal had effected credit on various dates for the amounts aggregating Rs.28,017.00 in the Savings Bank Accounts No. 3326 and 3986 in the name of the his minor son namely Anil Kumar (under his guardianship) and Smt. Phoolmati, his wife respectively being maintained in Kopaganj Branch, District Azamgarh of the opposite party bank.

The amounts so credited to these two accounts were withdrawn by him and his wife. Thus he defrauded the bank by making fictitious entries in the aforesaid accounts.

Sri Ram Kripal had also prepared and passed fictitious term deposit receipt interest account voucher for Rs.1100.00 on 16.05.1988 and credited the proceeds to the Saving Bank Account No. 3986 of his wife Smt. Phoolmati by altering the date of payment in term deposit receipt register which was in the name of Sri Bali Chandra Singh, who had already paid interest on 03.05.1988. Thus Sri Ram Kripal had embezzled the bank's fund.

Sri Ram Kripal on 27.04.1988 had raised a fictitious debit entry for Rs.19,965.00 (Rs.10,000.00 debited to Special Term Deposit Receipt Account and Rs.9,965.00 in the to its Interest Account) and credited Rs.9,965.00 in the Savings Bank Account No. 3986 in the name of his wife Smt. Phoolmati. The withdrawal was passed for payment by him and the amount was withdrawn by his wife on 3.5.1988.

With a view to conceal the above facts of misconduct, he himself wrote the relevant vouchers in the transfer scroll as clean cash. Thus he embezzled the Bank's fund to the tune of Rs.9,965.00."

16. Learned AR for the workman has cross examined Mr. Nanhe Prasad but the management witness has nowhere been confronted with the above evidence given regarding the alleged embezzlement. Surprisingly no question was asked by the workman or his Learned AR regarding aforesaid instance of embezzlement. The witness was asked to reply whether the record pertaining to the embezzlement has been filed before this Court or not. More- over the fact regarding appeal filed by the petitioner workman before the competent authority, has no where been mentioned in the claim statement. The workman in his cross examination before this Court has admitted that he had filed departmental appeal which was decided and order was communicated but that order was not challenged by him before Hon'ble High Court.

17. The management has filed copy of the letter dated 19.6.1992, regarding disciplinary proceedings, option was given to the workman to prefer an appeal before the Appellate Authority, another letter dated 23.6.1993 regarding information of the order passed in appeal. Detailed order dated 7.6.1992 passed by the Appellate Authority/Dy.Managing Director has also been filed. These papers have been annexed with the written statement, the written statement has been supported by an affidavit of Branch Manager, SBI.

18. Since averments made by the management witness in para 7 of his affidavit M-26, are clearly un rebutted, the version emphasized by the management has therefore attained more weight. It is also an admitted fact that the order dated 7.6.1993 passed by Dy.Managing Director/Appellate Authority has not been challenged by the workman before any competent Court. It may also be pertinent here the workman has admitted his signature on paper no.10/2,10/3,10/4,10/5 and 10/6 filed by the management. These papers relate to the disciplinary proceedings, order passed by the Appellate Authority etc. The workman has not filed copy of any letter sent by him to the bank authorities wherein request was ever made by him to provide an opportunity of hearing to adduce evidence in the departmental proceedings. The submissions made by the opposite party that the petitioner is not covered under the definition of the "workman" as per the provisions of I.D. Act., does not carry legal weight, and therefore it can not be accepted.

19. After having heard the intellect arguments of both the parties at length and perusal of the record in the light of the pronouncements made by the Hon'ble Court, it is inferred that the alleged order whereby the services of the workman have been terminated by the management, can not be treated as illegal or irregular. The petitioner was found guilty by the management for gross misconduct and embezzlement. However, the petitioner is covered under the definition of "workman". The workman is not entitled to any relief.

20. Award as above.

LUCKNOW

RAKESH KUMAR, Presiding Officer

09.06.2017

नई दिल्ली, 4 जुलाई, 2017

का.आ. 1624.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण,

नं. 1, मुंबई के पंचाट (संदर्भ संख्या 10/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2017 को प्राप्त हुआ था।

[सं. एल-41011/15/2003-आई.आर. (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 4th July, 2017

S.O. 1624.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Mumbai as shown in Annexure, in the industrial dispute between the management of Western Railway and their workman, received by the Central Government on 04.7.2017.

[No. L-41011/15/2003-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1

MUMBAI

Present : Justice Surendra Vikram Singh Rathore, Presiding Officer

REFERENCE NO.CGIT-10 OF 2004

Parties: Employers in relation to the management of The Divisional Railway Manager Western Railway

And

Their workmen

Appearances:

For the first party /Management :

Mrs. Pooja Kulkarni, Adv.

For the second party /workman : Mr.M.B.Anchan, Adv.
State : Maharashtra

Mumbai, dated the 1st day of March, 2017

AWARD

1.. As per the Schedule of this Reference, the following dispute was referred to this Tribunal.

“Whether the action of the management of Western Railway (Viz. Mumbai Division, Mumbai Central, Mumbai in granting promotion to the junior employee to Shri Jeevan Singh is legal and justified? If not, what relief, Shri Jeevan Singh is entitled to?”

2. Notices were issued to both the parties and notice was also issued to the Union and Mr.M.B.Anchan has put in appearance on behalf of the Union to represent the second party Jeevan Singh.

3. As per the Statement of Claim, the second party Jeevan Singh had passed Xth Standard, he was holding I.T.I Diploma in Sheet Metal Trade. He was appointed as Khalasi on 14.1.1981 by the Chief Signal Inspector, Western Railway, Bandra. Since he has passed Xth Standard and was also holder of ITI Certificate, so he was given an assurance that he will be promoted to Skilled Category of Fitter Grade-III after working for six months. After working for 120 days Jeevan Singh was given temporary status from 14.6.1981 and after attaining the temporary status, he was granted annual increment in the pay scale of Khalasi regularly. Thus, he became the permanent Railway Employee w.e.f. 14.5.1981. However, he was not promoted to the post of Fitter Grade-III even after completing six months as assured earlier. The case of the second party was that he was entitled for promotion to the skilled post of Fitter Grade-III from 22.7.1992 when his juniors were promoted to the said post but he was not called for Trade Test for the said post. In the Statement of Claim, details of 7 other workmen have been given alongwith their date of appointment and as per the Claim of the second party these workmen were promoted earlier to him. Out of the 7 Workmen, Workmen mentioned at Sr.No.1 Ramkumar R., Sr.No.2 S.Masilamani and Sr.No.7 A.Sebastian were transferred to Parel Workshop on their own request. Therefore, they were placed at the bottom of the Seniority in the said Cadre at Parel Workshop, therefore, they cannot be treated to be Senior to Jeevan Singh. The other 4 employees joined Railway Service after the appointment of the second party, therefore, they were junior to him. Thus, all the 7 Workmen were junior to the second party. However, they were called for Trade Test and were promoted to the post of Fitter Grade-III in the Scale of 3050-4590 on different dates. They were however, promoted as Fitter Grade-II in the Pay Scale of 4000-6000 on different dates. Mr.Dilip A.Kadam was again promoted as Fitter Grade – I in the Pay Scale of 4500-7000, while Jeevan Singh was not called for Trade Test for promotion as indicated above. He was not given Seniority of his initial date of appointment from 14.1.1981 and promotions to the post of Fitter Grade-III, Fitter Grade-II and Fitter Grade-I was wrongfully denied to him. He was also denied promotion to 25% quota of ITI Certificate Holders. Thereafter, Representations were made by the second party. In the Statement of Claim, it was not pleaded on behalf of the second party that he was also transferred to Parel Workshop subsequently.

4. The Management has filed its Reply. In Written Statement, the Claim of the second party has been denied on the ground that the second party was junior most to the persons mentioned by him in his claim. The other persons who were mentioned were transferred to Parel Workshop prior to the second party. The second party was transferred and joined the Parel Workshop in 1987. Therefore, as per the seniority of Parel Workshop he was junior to the employees who were transferred to the said Workshop prior to him. Since Jeevan Singh was junior to them as per the seniority of Parel Workshop, therefore, no illegality or irregularity was committed by the Management in not considering the second party for promotion. It has also been pleaded that for the post of Fitter Grade-III educational qualifications are not necessary and promotions are made directly in accordance with the Seniority. There is specific denial of the averment that any assurance was given by any Officer of Western Railway that he will be promoted after six months. The first party has mentioned the list of all the employees who had joined Parel Workshop and as per the dates of Entry in the Parel Workshop. Jeevan Singh was last to join on 21.12.1987. So he was junior to the other persons. There is no dispute regarding the dates of promotion and dates of joining the Parel Workshop. It has also been denied that the work of Fitter Grade-III was taken by the second party Jeevan Singh, so he is not entitled to the payment of wages as per Grade-I employee.

5. In the Rejoinder Affidavit filed on behalf of the workman, it has been stated that the seven workmen named in the Statement of Claim were transferred on their request to Parel Workshop, the dates of transfer in Parel Workshop have also been mentioned while the Workman Jeevan Singh was transferred on Administrative grounds w.e.f.21.12.1987. Therefore, he was Senior to the persons who were transferred on their own requests in view of Rules 311 and 312 governing the transfer from one establishment to other.

6. On behalf of the Management amendment of the Written Statement was also prayed by means of Application dated 13.7.2011. On behalf of the second party, it was objected and ultimately vide Order dated 14.9.2011 the said Amendment Application was rejected.

7. In view of the rival contentions, the following Issues were framed:

- (1) *Whether the workman Mr. Jeevan Singh is senior to other employees who have been promoted by the Management of Western Railway (DRM), Mumbai Division, Mumbai Central, Mumbai?*
- (2) *Whether the action of the Management in granting the promotion to the junior employees is justified?*
- (3) *Whether the promotion denied to the workman Mr. Jeevan Singh is justified?*
- (4) *To what relief, if any, is the workman entitled?*

8. In support of its claim on behalf of Jeevan Singh, he himself has filed his Affidavit as Examination-in-Chief and has also filed the following documents:

- (i) Copy of the Rule governing the Transfer in the interest of Admn. Ex.W-1.
- (ii) Copy of the last pay Certificate. Ex.W-2.
- (iii) CSI, Bandra, W.Rly, letter dated 19.12.1987 to SI-W/S-PL Ex.W-3.
- (iv) Workman's letter dated 24.11.88 to DRM, W.Rly., BCT. Ex.W-4.
- (v) Sanjeevani Raikar's letter dt.27.11.92, The General Manager, W.Rly., Churchgate. Ex.W-5.
- (vi) G.M., W.Rly's reply. Ex.W-6.
- (vii) Workman's letter dt.10.2.1993 to DRM. Ex.W-7.
- (viii) Workman's letter dt.11.1.1996 to DRM. Ex.W-8.
- (ix) Workman's letter dt.10.6.1996 SR.S&T. Ex.W-9.
- (x) Workman's letter dt.5.8.1998 to DRM. Ex.W-10.
- (xi) Sanjeevani Raikar, MLA's letter dt.26.3.1999 to the W.Rly. Ex.W-11.

9. On behalf of the first party, Affidavit of B.P.Upadhyay, A.P.O.A., Western Railway, has been filed and he was also cross-examined on behalf of the first party. However, no documents were filed on behalf of the first party.

10. During the course of argument, learned counsel for the Management Mrs.Pooja Kulkarni has raised a preliminary issues which touches the jurisdiction of this Tribunal to entertain the controversy involved in this case. The argument of the Management is that the grievance of the workman is a private dispute which is virtually regarding re-fixation of his seniority and there is no espousal either by the Union or by the Co-workmen as is the requirement of law and in absence of such espousal this Tribunal has no jurisdiction to entertain such private dispute.

11. Learned counsel for the workman has also argued on this point and his submission is that the Written Statement on behalf of the Workman was signed by the Vice-President, Paschim Railway Karmachari Parishad.

12. Since this argument touches the basic jurisdiction of this Tribunal, therefore, it ought to be have been considered and decided before looking into other Issues.

13. The claim of Jeevan Singh was mainly on the ground that the other employees were transferred to Parel Workshop on their own request, therefore, as per the Service rules they were to be placed on the bottom of the Cadre to which they belong. Since the second party was transferred on Administrative ground, therefore his Seniority ought to have been maintained, but the first party has committed illegality in putting him below the persons who were transferred on their own request and accordingly treating him junior to them. The fact that the other persons were transferred to Parel Workshop were junior to the second party has specifically been denied by the first party. Learned counsel for the second party has made his submissions that the other persons were transferred on their own request, therefore, they ought to have been placed at the bottom while the second party Jeevan Singh was transferred on Administrative ground, therefore, he was entitled for his Seniority from the date of his initial appointment. This fact has been specifically denied by the first party Management. The arguments raised on behalf of the Management has substance that there is no practice of giving assurance at the time of initial appointment that he will be promoted within six months and there is nothing on record to show that the Workmen who were earlier transferred from Bandra to Parel were transferred on their own request. Admittedly, there is not even a single document on record to infer that the earlier transfers to Parel Workshop were made on the request of these employees. Admittedly, those Workmen were transferred to Parel Workshop prior to the transfer of the second party. So in absence of any document the submission that they were transferred to the Parel Workshop on their request cannot be relied upon. The second party has not taken any steps to examine any of these workmen nor has taken any step to call any employee of the Management alongwith

relevant record. The grievance of the second party was that his seniority was wrongly fixed in the Parel Workshop. He has joined the Parel Workshop on 21.12.1987. Thus the cause of action arose in the year 1987 when his seniority was wrongfully fixed but the dispute has been referred in the year 2004 i.e. after about 17 years. The second party is claiming Seniority from 1981.

14. Thus the main grievance of the second party is regarding his seniority. His submission is that his seniority in Parel workshop has been fixed against the rules. Unless and until his seniority is refixed, he is not entitled to any relief. Management has come with a definite case that second party was junior to all these seven workmen as per the seniority of Parel workshop. Documents filed on behalf of the second party shows that he could not be promoted in Bandra workshop as there was no vacancy. He was informed by the authority concerned that vacancy exists in Parel Workshop. It transpires from the perusal of the documents filed on behalf of second party that there were only two vacancies in Fitter grade III cadre. Management has argued that since there were vacancies in Parel workshop so he himself opted for his transfer to Parel workshop. Seniority list has not been filed by any of the party. However, witness of Management has stated that second party was junior to all these workmen. It is really surprising that this statement of MW Bindoo Upadhyia was not challenged to be incorrect in cross-examination.

15. There is yet another very important flaw in this matter that the Workmen over and above whom he is claiming Seniority have not been impleaded as party. This is settled principle of service jurisprudence that such workmen whose Seniority may be effected are necessary party and must be implead. On this point Reference may be made to the pronouncement of Hon'ble the Apex Court in the case of State of Rajasthan Versus Uchhab Lal Chhanwal 2013 (0) AIJEL-SC 54604. Paragraphs 11 and 15 of the said judgment are relevant which are being reproduced as under:

"11. Though some argument was canvassed with regard to the relevance of the punishment of censure, yet the said aspect need not be adverted to. On a perusal of the writ petition, the order of the writ court and that of the Division Bench we notice that there were specific averments that juniors placed at serial numbers 9, 10 and 11 in gradation list had been promoted vide order dated 20.8.1997. They have not been arrayed as parties. Needless to emphasize, in the event the order passed by the High Court is affirmed, the persons who are seniors to the respondents in the promotional cadre are bound to become junior regard being had to their seniority position in the feeder cadre. It is well settled in law that no order can be passed behind the back of the person that shall adversely affect him. In this context, we may refer with profit to the decision in Vijay Kumar Kaul and others V/s. Union of India and others, (2012) 7 SCC 610, wherein it has been held thus:-

"Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Praveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant."

14. "In the case at hand the dispute relates to promotion which will have impact on inter se seniority. The learned counsel for the respondents assiduously endeavoured to convince us that they are agitating the grievance with regard to their promotion. Despite the indefatigable effort, we are not persuaded to accept the aforesaid preponement, for once the respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice. On this singular ground the directions issued by the writ court as well as the Division bench pertaining to grant of promotion to the respondents are quashed. To elaborate, as far as the conclusion of the High Court relating the circular is concerned, it is unexceptionable and we concur with the same."

16. Next argument of the Management is that the dispute raised by the Workman is a personal dispute and without espousal of the same by the Union or by group of Co-Workmen, it cannot be given the shape of Industrial Dispute. The argument is based on the ground that the Statement of Claim and the Issue framed clearly indicate that the only dispute is regarding the individual Seniority of the Workman Jeevan Singh. He claims that because of the facts stated in the Statement of Claim and the Rejoinder Affidavit, he ought to have been given Seniority w.e.f. 14.1.1981 over and above the Seven Workmen mentioned in his claim. Per contra, learned counsel for the Workman has stated that dispute has duly been espoused by the Union as the Statement of Claim and Rejoinder Affidavit have been signed by the Vice-President of the Divisional Paschim Railway Karmachari Parishad.

17. A perusal of the Statement of Claim and the Rejoinder Affidavit shows that it has nowhere been stated that at any point of time this dispute was espoused by the Union before filing the Statement of Claim. Even in the Statement of Claim and Rejoinder Affidavit filed on behalf of the Parishad named above, it has nowhere been stated that the dispute was raised by the Parishad before the Conciliation Board or before the Management, or the workman Jeevan Singh approached the Union for redressal of his grievance. The only averment on this point is that Jeevan Singh made a request, vide letter dated 5.8.1998, to Smt.Sanjivani Raikar, Member of Legislative Council. Then she vide her letter dated 26.3.1999 again requested the Railway Administration to consider the request of Jeevan Singh for promotion. None of the document filed on behalf of the Workman are capable of giving rise to any inference that this dispute was any stage espoused by the Union before the Conciliation Board or before the Management. A private dispute to acquire

the character of an Industrial Dispute had to be supported by the Union of the Employees or by a group of Co-workmen. The Industrial Tribunal has jurisdiction only to adjudicate the Industrial Disputes. Once the Tribunal comes to the conclusion that the dispute was not espoused, it loses jurisdiction to adjudicate as there is no industrial dispute. Word Industrial Dispute has been defined in Section 2 K as under –

“Section 2K. “industrial dispute” means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

Espousal is not a mere technicality. The entire jurisprudence of the Industrial Disputes Act is in respect of collective disputes of workmen. So far as the espousal is concerned, there is no particular form prescribed under law to effect such espousal but the Union must normally express itself in the form of a resolution which should be proved if it is in issue. However, proof of support by the union may also be available *aliund*. The statute contemplates only settlement of disputes involving the rights of workmen as a class and not disputes which merely touch individual rights of a single workman. It has been so observed by the Honourable Apex Court in the case of D.N.Banerjee vs. P.R.Mukherjee AIR 1953 SC 58. Thus, in the instant case, a perusal of the Issue itself shows that the dispute was a private dispute regarding the seniority of the second party Jeevan Singh. The workman Jeevan Singh has utterly failed to prove that the same was espoused by the Union. There is nothing on record to infer that at any time till the reference was made the dispute was adapted by the Union and it was supported by appreciable number of co-workmen.

18. In view of the discussion made above, this Tribunal reaches the conclusion that the dispute of the workman Jeevan Singh is of a private nature which has not been duly espoused by the Union / Parishad or by group of co-workman. After this finding, the Tribunal loses its jurisdiction to entertain this matter. On this point learned counsel for the Management has placed reliance in WP (C) Nos. 6682 of 2002 & 6247 of 2004 in between Management of Messers Hotel Samrat Versus Government of NCT & Others. Para 12 of the said Judgment is being reproduced as under:

“12. The dispute between an individual workman and the employer can be treated as an industrial dispute only where the workmen as a body or a considerable section of them, make common cause with the individual workman and espoused his demand. The question arises how the espousal can be inferred. Espousal means that the dispute of an individual workman is adapted by union as its own dispute or a large number of workmen give support to the cause of an individual workman. In the instant case, the only evidence available on record about espousal of the cause is the statement of the Secretary of the Union made before the Tribunal. In his statement, he stated that he requested the management to treat workman Hira Singh at par with other employees and grant him regular pay scale and he met the management for this purpose and on his pursuance, the management started deducting provident from salary of the workman Hira Singh. There is no evidence apart from this evidence about the espousal of the cause. Does mere lending of name of the union by the union secretary while raising the conciliation proceedings or for issuing notice amount to ‘espousal’ of cause Union is a representative body of the workmen. The cause of any workman can be espoused collectively by the Executive Body of the union by taking a decision in this respect. This decision may not be taken in a formal manner but can be taken in an informal manner but it has to be a collective decision of the executive body of the union. An individual member of the Executive body cannot take the character of the entire union and cannot bind the union. Merely because the union secretary met the management and requested for giving a regular appointment letter to the workman, would not amount to espousal of the cause. In this case, this is the only evidence available on record in respect of espousal. In J.H. Jadhav’s case (supra), the Supreme Court observed that the union must formally express itself in the form of a resolution which should be approved by its members. However, the number of supporting members of the union may be relevant depending upon facts of each case. In 1961 II LLJ 436 Bombay Union of Journalists vs. Hindi Bombay, the Supreme Court observed that an individual dispute can take the character of an industrial dispute only if it was proved that it was, before it was referred, supported by union of employees. In each case, for ascertaining whether an individual dispute has assumed character of an industrial dispute, the test is whether on the date of reference, the dispute was taken up and supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of employees. In this case, the Supreme Court observed that notice of the meeting for the purpose of considering request by the members for tenable cause of concerned workmen was not given to the employees of the Hindu Board which were not the members of the union at the relevant time. Hence, by mere passing of a resolution by other members of the union, the case of the appellant that the cause of concern workmen was supported by the other employees of Hindu Board, could not be supported. The Supreme Court observed that unless an individual dispute was taken up by union of employees of the employer or by appreciable number of employees of the union, it remains as an individual dispute and does not become an industrial dispute. In 2001 (89) FLR 458 Prakash and Ors vs. Superintending Engineer (ELEL) and Ors, the Karnataka High Court observed that an individual can raise a dispute, only for removal, termination or dismissal. If the workman wants to raise a

dispute for his absorption and regularization, that can only be done through the Union on behalf of the workman or workmen.” (underlined by me)

19. In paragraph 14, of the above mentioned judgment, Honourable High Court of Delhi has observed that once the Tribunal decided the issue of espousal against the workman, the Tribunal lost its jurisdiction to adjudicate the dispute since no industrial dispute existed.
20. Therefore, This Tribunal refrains from entertaining the other Issues.
21. The Reference is answered accordingly.

JUSTICE S.V.S. RATHORE, Presiding Officer

नई दिल्ली, 4 जुलाई, 2017

का.आ. 1625.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 34/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2017 को प्राप्त हुआ था।

[सं. एल-41012/23/2016-आई.आर. (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 4th July, 2017

S.O. 1625.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2017) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Chennai as shown in Annexure, in the industrial dispute between the management of State Bank of India and their workman, received by the Central Government on 04.07.2017.

[No. L-41012/23/2016-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT, CHENNAI

Friday, the 12th May, 2017

Present: K. P. Prasanna Kumari, Presiding Officer

Industrial Dispute No. 34/2017

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of State Bank of India and their workman)

BETWEEN :

Sri G. Karthigaichamy

...1st Party/Petitioner

AND

The Deputy General Manager (B&O)
State Bank of India
RBO-1, Administrative Office Madurai Cluster
Network-II, Madhuram Complex No. 2 Ambedkar Road
Madurai-625002

... 2nd Party/Respondent

Appearance :

For the 1 st Party/Petitioner	:	In Person
For the 2 nd Party/Management	:	-

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-41012/23/2016-IR (B.I) dated 30.03.2017 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the punishment of dismissal imposed on Sri G. Karthigaichamy by the Management of State Bank of India is just, proper, fair and proportionate to the misconduct alleged by the bank?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 34/2017 and issued notice to both sides. On receipt of notice the petitioner had appeared in person.

3. ID 16/2017 based on the reference by the Government in respect of the same relief is pending before this Tribunal. The petitioner has made endorsement stating that because of the pendency of ID 16/2017 he does not want to proceed with this ID.

In view of the endorsement by the petitioner the ID is closed and is disposed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th May, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked:**On the petitioner's side**

Ex. No.	Date	Description
	Nil	

On the Management's side

Ex. No.	Date	Description
	Nil	

नई दिल्ली, 4 जुलाई, 2017

का.आ. 1626.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर, के पंचाट (संदर्भ संख्या 45/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2017 का प्राप्त हुआ था।

[सं. एल-12011/22/2014-आई.आर. (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 4th July, 2017

S.O. 1626.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2014) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Jabalpur as shown in Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 04.07.2017.

[No. L-12011/22/2014-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****No. CGIT/LC/R/45/2014**

General Secretary,
Dainik Vetan Bhogi Bank Karamchari Sangathan,
F-1, Tripti Vihar,
Opp Engineering College,
Ujjain (MP)

... Workman/Union

Versus

Chief Manager (HR),
State Bank of India,
HR Section, Admn Office,
5, Y.N.Road, Indore (MP)

...Management

AWARDPassed on this 17th day of May 2017

1. As per letter dated 30-5-14 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/22/2014-IR(B-I). The dispute under reference relates to:

“Whether the demand of Union claiming difference of wages in favour of Shri Ravindra Ganpat daily wage employee from 13-5-08 to 30-11-10 is justified or not? If yes, what relief the daily wagger is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through General Secretary, Daily Wage Bank Employees Union. Case of Ist party workman is that 2nd party has power to appoint temporary employees as per clause 20.7 of Bipartite settlement dated 19-10-66. When Ist party workman was appointed as permanent person from 13-5-08 after holding his interview, he was paid Rs.100 per day. His wages were increased Rs.3000 to 3500 per month. He completed more than 240 days service during each of the year. His services were orally terminated without notice on 30-11-2010. He was not paid retrenchment compensation. He was working under different Branch Managers. That he was not paid scale wages as per 9th Bipartite settlement under which pay scale for subordinate staff was Rs. 5500-11000. That Ist party is claiming difference of wages for the period of his employment.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party raised preliminary objection that workman as not appointed by Assistant General Manager neither he was engaged. The reference is not tenable. That the Bank is established under Section 35(2) State Bank of Indore Act 1955. State Bank of Indore is merged in State Bank of India on 28-7-12 as per clause 7 of notification of merger. Permanent regular officers/ employees are eligible for service in State Bank of India daily Wagers are not shown eligible for service in the Bank. It is reiterated that Ist party workman was engaged for casual work on daily wage basis. He was not appointed against sanctioned post. Workman is not entitled to benefit of circular dated 7-9-92. 2nd party denied that workman was paid Rs.100 per day and his salary were enhanced Rs.3000 to 3500 per month. It is denied that services of Ist party are terminated in violation of Section 25-F of ID Act. On such ground, 2nd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the demand of Union claiming difference of wages in favour of Shri Ravindra Ganpat daily wage employee from 13-5-08 to 30-11-10 is justified or not?	In Negative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

5. Workman has not adduced evidence. The representative of workman submitted on 16-2-2016 he does not want to adduce evidence. The term of reference pertains to claim for difference of wages as per Bipartite Settlement. As per pleadings in Statement of claim, workman is claiming difference of wages as per 9th Bipartite Settlement. The documents produced by workman regarding payment of wages, zerox copies of documents in R/104/12 has been admitted. Documents shows workman was paid Rs.100 per day and for the period 1-8-08 onwards Rs.3000 per month. The copy of circular dated 7-9-92 is also produced on record. Document prescribes wages for part time employees working less than 3 hours, wages Rs.75 working less than 3 hours in branch having area 501 to 000 sq.feet Rs.120 etc working 6-13 hours having Branch Area 1501 to 2000 sq.ft, 1/3rd scale wages. Management also did not adduce evidence.

6. Learned counsel for Ist party submitted copies of award in R/53/10 & R/79/11 & counsel for management submitted copies of award in R/79/09 & R/7/12 for consideration. Each case requires to be decided considering facts and evidence on record.

7. In absence of evidence of both parties, the contentions of workman that he was working 8 hours every day is not established. Even how much hours workman was working is also not established. When workman was paid Rs.100 per day since 1-8-08, he was paid Rs.3000 per month. Even if 1/3rd pay scale is to be allowed, it is not possible to calculate the difference of wages workman would be entitled. Even if 30 % is calculated considering the workman was paid Rs.3000 per month. It appears workman has already been paid more amount therefore claim of workman for difference of wages cannot be upheld. For above reasons, I record my finding in Point No.1 in Negative.

8. In the result, award is passed as under:-

(1) The demand of Union claiming difference of wages in favour of Shri Ravindra Ganpat daily wage employee from 13-5-08 to 30-11-10 is not legal.

(2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 जुलाई, 2017

का.आ. 1627.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन एफ रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, गुवाहाटी के पंचाट (संदर्भ संख्या 04/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2017 को प्राप्त हुआ था।

[सं. एल-41012/29/2015-आई.आर. (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 4th July, 2017

S.O. 1627.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2015) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Guwahati as shown in the Annexure, in the industrial dispute between the management of N. F. Railway and their workmen, received by the Central Government on 04.07.2017.

[No. L-41012/29/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM.**

Present: Shri Mrinmoy Kumar Bhattacharjee, M.A., LL.B. Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 04 of 2015.

In the matter of an Industrial Dispute between :-

The Management of N.F.Railway , Lumding Division,Nagaon.

Vrs.

Workman Sri Manik Lal Chakrabarty, Karimganj, Assam.

APPEARANCES :

For the Workman. : Self Defence.

For the Management. : None Appeared.

Date of Award: 07.06.2017.

AWARD

1. The present reference arose out of an Industrial Dispute between the workman Sri Maniklal Chakrabarty and the Management of N.F. Railway. According to the Central Government, an Industrial Dispute exists between the employer in relation to the Management of N.F. Railways and their workman in respect of the matters which have been specified in the Schedule as under:

SCHEDULE

“Whether retrospective promotional benefit to Shri Manik Lal Chakraborty Ex PS/II to AM/BPB/N.F.Railway, should be considered by the General Manager (P), N.F.Railway, Maligaon Guwahati-781011 or not? Is he entitled for any compensation for the delay in effecting his promotion?”

2. On receipt of the reference, notices were issued to the workman as well as the Management. In the mean time the workman submitted his claim petition which was not in the format usually followed by the parties. However, the gist of the claim was understandable from the “synopsis of the case” submitted by the workman. Despite service of notice, the Management remained absent. Accordingly, vide order dated 5.4.17 the reference was ordered to proceed ex-parte against the management.

3. The workman submitted a synopsis of his claim/ case the gist of which is mentioned as under. He joined N.F. Railway as Typist on 23.9.71 and was promoted as Stenographer at Badarpur on 10.9.1973. In the year 2003 he was promoted as Stenographer Grade-I and in the year 2005 was promoted as Private Secretary- II. The claim of the workman was initiated on that point. According to him, he was promoted by an order dated 13.12.2005 but it was not communicated to him till 13.2.2006 and even then he was not released to join his upgraded assignment and instead he was told that since he could not be spared he would be given the financial benefit of his promotion. He further claimed that though he was entitled to get that financial benefit of promotion to Private Secretary-II from 13.12.2005, he was given that benefit from June, 2006 and on 31.8.2006 he retired on superannuation. According to him he was entitled to get the benefit from the month of December, 2005 onward. In spite of his several appeals to the authority, nothing happened and ultimately the matter could not be resolved on conciliation and the appropriate government referred the matter to this Tribunal with the above reference.

4. Because of absence of the management despite service of notice the matter proceeded ex-parte against the management as per order passed by this Tribunal on 5.4.2017.

5. The workman Sri Manik Lal Chakraborty examined himself as the only witness in this case.

6. In his examination-in-chief the workman stated that on 23/09/1971 he joined N.F.Railway as Typist and was promoted as Stenographer on 10.9.1973. In the year 2003 he was promoted as Stenographer Grade-I and then in the year 2005 he was promoted to the Private Secretary-II. But, though the order of his promotion as Private Secretary-II was issued on 13.12.2005, he was not served any copy of the same immediately and was communicated about the promotion order on 13.2.2006. Because the authority could not spare him, he was promised that all his promotional benefits will be given to him. But these were given to him from the month of June, 2006 to August, 2006 when he retired on superannuation. He exhibited the correspondences regarding his promotion etc as Ext 1 to Ext. 6. He prayed for releasing financial benefits to him from the month of December, 2005.

7. On careful perusal of the evidence of the workman it appears that vide Exhibit-3, which is an office order dated 13.12.2005, the workman who was at that point of time a Stenographer in Grade-I in the Scale of Rs.5,500 to Rs.9,000/- was appointed with others to officiate as PS-II in the Scale of Rs.6500/- to Rs.10,500/- and he was directed to be posted in the Office of ADRM, Lumding as PS-II. This order was admittedly issued on 13.12.2005 and the workman appears to have claimed his promotion forthwith i.e. from the date of issue of the order (13.12.2005). It however appears from Exhibit-1 as well as his evidence that the aforesaid promotion order was brought to his notice on

13.2.2006 and immediately thereafter he filed a prayer before the Area Manager, Badarpur, N.F. Railway for sparing him to join as PS-II in the scale of Rs.6,500/- to Rs.10,500/- under ADRM, Lumding. Exhibit-2 is a communication made to ADRM, Lumding by Area Manager, Badarpur, N.F. Railway by which it was communicated to the ADRM that though Sri Chakrabarty was promoted as PS-II in the Scale of Rs.6,500/- to Rs.10,500/- and posted under ADRM he can not be spared without a reliever. It was however also mentioned in the communication that Sri Chakrabarty may be given promotional benefit in his working place at Badarpur till such time his reliever is available. It was also mentioned that Sri Chakrabarty will retire from his service on superannuation on 31.08.2006. Exhibit-4 is a communication from the N.F.Railway Headquarter, Maligaon to all the DRMs. that whenever employees are not relieved even within 3 months of issue of promotion orders, such cases must be put up to DRM or Head of the Office and the Controlling Officer to hold responsibility for not relieving the staff concerned. This communication dated 29.7.97 which stipulates the policy regarding giving effect to promotion of the employees. Exhibit-5 is a letter by which the appeal of the workman regarding giving effect to his promotion from the date of the issue of the promotion order i.e. 13.12.2005, was forwarded to the General Manager, N.F.Railway, Maligaon. But nothing in that regard appeared to have been done to give promotional benefit to the workman from the date of order of the promotion i.e. 13.12.2005. By Exhibit-6 the workman wrote to the General Manager, N.F.Railway, Maligaon for giving effect of his promotion from the date of issue of the promotional order i.e. 13.12.2005.

8. From the evidence of the workman it appeared that the Authority at Badarpur did not release him on time and he was told by the authority that if it was not possible to release him, all promotional benefits will be given to him at Badarpur itself. It also appeared from his evidence that ultimately the Authority gave effect to the promotion in the higher Scale from the month of June, 2006 and he ultimately retired on 31st August, 2006 which means that he got the promotional benefits for the month of June, July, and August, 2006. According to him he deserved to be promoted from December, 2005 and in spite of his repeated appeals the Authority did not give the aforesaid benefits to him. The workman has now prayed to give effect to his promotional benefit with all consequential benefits by posting him in the higher Scale of Rs.6,500/- to Rs.10,500/- with effect from 13.12.2005 retrospectively. In other words the workman prayed that he be given the higher Scale from December, 2005 to May, 2006 because from June, 2006 the Authority put him in the higher Scale. No lawyer appeared for the workman and nobody appeared for the Railways in this case and the matter proceeded ex-parte against the Railways. From the evidence as well as the documents exhibited in the case it appears that the workman rightly deserved to be promoted from the date of promotional order i.e. 13.12.2005 or at a reasonably closer date as PS-II. Admittedly had he been released immediately he would have got the higher scale from the date of the order itself or from the date of his joining. It is clear from the record that he was not released from his existing duty at that point of time from Badarpur because of non-availability of reliever. Since this was not a mistake on the part of the workman he should not be deprived of promotional benefits from the date when his promotion order was issued. However the order of promotion was issued from Maligaon on the aforesaid date and it can be presumed that even if the workman was released without unreasonable delay he could have been able to join the higher post of PS-II in the month of January, 2006.

9. In view of the above, it is decided that the workman Sri Manik Lal Chakrabarty, ex- PS-II be given the effect of his promotion in the higher Scale of Rs .6,500/- to Rs.10,500/- from 1st of January, 2006 retrospectively. His Pay Scale shall stand revised in the higher Scale of Rs.6500- Rs.10500 with effect from 1st January, 2006 with all consequential benefits as well as his pensionary benefits with retrospective effect. The concerned authority of the N.F.Railway shall execute the above order within three months from the date of the receipt of the Award by them. Send the Award to the ministry as per procedure.

Given under my hand and seal of this Court on this 7th day of June, 2017 at Guwahati.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer,

नई दिल्ली, 5 जुलाई, 2017

का.आ. 1628.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दिल्ली मेट्रो रेल कॉर्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 100/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.07. 2017 को प्राप्त हुआ था।

[सं. एल-12025/01/2017-आई.आर. (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th July, 2017

S.O. 1628.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 100/2014) of the Cent. Govt. Indus. Tribunal-cum-Labour Court

No. 11, Delhi as shown in Annexure, in the industrial dispute between the management of M/s. Delhi Metro Rail Corporation and their workman, received by the Central Government on 05.07.2017.

[No. L-12025/01/2017-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. -II, KARKARDOOMA COURT COMPLEX, DELHI**

Present: Shri Harbansh Kumar Saxena

ID. No. 100/2014

Sh. Pappu Kumar S/o Ram Ashree,
R/o A-275 , Jaitpur Gaon, Badarpur,
New Delhi-110044

...Workman

Versus

1. M/s. Delhi Metro Rail Corporation (Principal Employer)
Fire Brigade Lane, Barakhamba Road,
New Delhi-110001.

2. M/s. BVG India Ltd. 106,
Mercantile House, 1st Floor, 15 K.G.Marg,
New Delhi-110001.

...Management

NO DISPUTE AWARD

On 2.12.2014 workman filed claim statement before this Tribunal. Which was registered as ID. No. 100/2014.

Workman in his claim statement prayed as follows:-

- i. He be reinstated with full back wages along with consequential benefits .
- ii. He claimed Rs. 25000/- for expenses of litigation.
- iii. Any other relief which court deem fit against claim statement.

At the time of framing of issue on 25.10.2016 it is pointed out by management that out of 21 workmen, 20 workmen settled their dispute by way of settlement and they get due amount on Account of full and final payment.

Management on 15.11.2016 informed that workman Sh. Pappu never came office of management for settlement.

Sh. Pappu not turn up in this Tribunal on 15.11.2016.

Fresh notice was issued to him. On 3.1.2017 on which postman made an endorsement that workman is not traceable. I directed management of DMRC to file response to reference. In –compliance of my order management No. 2.(BVG) moved an application by way of reference. Where-in he mentioned as follows:-

1. That the aforementioned matter is pending before this Hon'ble Court and workmen is not attending the same last one year.
2. That the claimant never approached to management as other co-workers have already settled their claims with management No. 2 i.e. BVG India Ltd. And this Honble Authority had also passed settlement award on 04.02.2016.
3. It is submitted that neither claimant nor union is interested to represent the case so it is humble request to this Hon'ble Authority to dismiss the matter on the basis of this application as it is not possible to attend the matter from management side on each date without workmen.

In these circumstances it is crystal clear that neither workman appeared before management for settlement nor adducing his evidence in this Tribunal in support of his case.

Although this Tribunal is required to decide industrial dispute with-in period of 3 months. So this Tribunal has no option except to pass no dispute award in the instant case inwant of evidence of workman.

Which is accordingly decided.

Dated: 27.03.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 5 जुलाई, 2017

का.आ. 1629.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 133/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.07.2017 को प्राप्त हुआ था।

[सं. एल-12012/47/2014-आई.आर. (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th July, 2017

S.O. 1629.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 133/2015) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the management of State Bank of India and their workman, received by the Central Government on 05.07.2017.

[No. L-12012/47/2014-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.-II, KARKARDOOMA COURT COMPLEX, DELHI

ID. No. 133/2015

Sh. Sanjai Kumar,
S/o Sh. Harnaam Singh,
R/o Jamalpur Alam, Aamkheda, Sanjarpur Praghna,
and Station Dhampur,
Bijnor (U.P).

Versus

The State Bank of India,
Dhampur Branch,
Dist.,-Bijnor.

AWARD

Reference No. L- 12012/47/2014-(IR(B-I) dated 31.08.2015 sent by Ministry of Labour of Government of India to this Tribunal for adjudication of following question:-

“Whether the workman Sh. Sanjai Kumar was removed from the services of State Bank of India w.e.f 07.01.2012 without valid reason, due procedure and compensation? If so, should he be reinstated with back wages or any compensation?”

Which was received in this Tribunal on 09.10.2015. Then it was register as I.D. No. 133/2014 and workman filed his claim statement notice to management of State Bank of India, was issued for filing of its written statement on 2.11.2015.

On the basis of contents of claim statement workman prayed that he was removed from the services of State Bank of India w.e.f. 7.1.2012 without any valid reason and adopting due procedure and without payment of his dues and compensation. On this count he claimed wages for the period of unemployment and earn wages along with his re-instatement in service sicne day of his termination i.e. 7.1.2012 .

Against claim statement management filed written statement. Through which management prayed as follows:-

“Hon’ble Court is requested to reject the claim of Petition with costs.

On 13.04.2016 workman filed rejoinder. Where-in he re-affirmed the contents of claim statement.

As the instant case was referred to this Tribunal for adjudication of questions of determination mentioned in schedule of reference which are sufficient for proper adjudication of the instant Industrial Dispute .Therefore I have not formulated any issue in the instant case and proceeded to decide this case on the basis of questions of determination mentioned in schedule of reference.

Workman in support of his claim examine himself to tender the affidavit filed in his evidence along with certain documents he was partly cross-examined by Ld.A/R for the management. When she adopted delaying tactics to prolong the process of cross-examination of workman and she remained adamant not to cross-examine workman. Then I closed her right of cross-examination with WW1. Thereafter Ld. A/R for the workman closed the remaining evidence of workman and I fixed the date for management evidence. After sufficient opportunity management has not adduced any evidence then I felt that management is defaulting party as per provision of Rule 10-B Industrial Dispute (Central) Rules, 1957. The dormancy of management remained continued. So I fixed 30.05.2017 for ex-parte arguments of workman. On 30.05.2017 I was on leave but written arguments on behalf of workman filed. However copy of which supplied to management and fixed 6.6.2017 for arguments by management.

On 6.6.2017 I reserved the award.

In the light of contents mentioned in written arguments supported with principles laid down by their lordship of Hon'ble Supreme Court in case of Sudarshan Rajpoot Versus Uttar Pradesh State Road Transport Corporation (2015)2 Supreme Court Cases 317.

And in case of Raj Kumar Dixit Versus Vijay Kumar Gauri Shanker (2015)9 Supreme Court cases 345 as well as finding of Civil Appeal No. 346 of 2015 Jasmer Singh Versus State of Haryana & Anr. Decided by Hon'ble Supreme Court on 13.01.2015.

In the light of contents of the written arguments of workman I perused the pleadings and only evidence of workman which is virtually without cross-examination. Although cross-examination is meant to challenge the veracity of the witness. Inwant cross-examination veracity of WW1 is unchallenged. Hence this Tribunal has no option except to rely on reliable and credible and required evidence of workman especially inwant of cross-examination of WW1 as well as in want of management evidence.

On the basis of which question of determination No. 1 is liable to be decided in favour of workman and against management. Which is accordingly decided.

Findings on question of determination No. 2 on schedule of reference. This question of determination relates to relief of workman under which it is to be determined whether workman is entitled to be reinstated the workman with back wages or any compensation.

In the light of contents mentioned in written arguments of workman I perused the pleadings of ex-parte evidence of workman supported with settled law of principle of law laid down by their lordship of Hon'ble Supreme Court. So principles laiddown by Hon'ble Supreme Court has binding force to all courts of India as per provision of Article 141 of Indian Constitution. So this Tribunal is bound to follow the principle according to provision of Article of Indian Constitution.

In the light of contentions and ex-parte evidence of workman. Workman is only entitled for reasonable compensation.

In circumstances of the instant case reasonable compensation to workman is Rs. 5,00,000/- (5 Lacs).

As workman has become over age to get any other job either in Government or Semi-Government concern and conduct of management in removal of workman from the service of State Bank of India w.e.f 7.1.2012 has already beenheld without any valid reason and due procedure. So aforesaid compensation is awarded to workman and management of State Bank of India is directed to pay such compensation within two months after expiry of available remedy against this Award.

Failing which workman shall also be entitled for 6 % p.a. with interest on the aforesaid amount of compensation from management of State Bank of India.

Thus, Reference is liable to be decided in favour of workman and against management. Which accordingly decided.

Claim statement is partly allowed.

Award is accordingly passed.

Dated:14.06.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 5 जुलाई, 2017

का.आ. 1630.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आरबीएस बिजनेस सर्विस प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 07/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.07.2017 को प्राप्त हुआ था।

[सं. एल-12012/07/2016-आई.आर. (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th July, 2017

S.O. 1630.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2016) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the management of M/s. RBS Business Service Pvt. Ltd. and their workman, received by the Central Government on 05.07.2017.

[No. L-12012/07/2016-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.-II, KARKARDOOMA COURT COMPLEX, DELHI**

ID. No. 07/2016

Sh. Ranjan Kumar,
H. No. 203A, 2nd Floor, Flat No.4,
Nawada, Uttam Nagar,
New Delhi - 110059

Versus

M/s. RBS Business Service Pvt. Ltd,
Shared Service Operations, OSS India,
Delhi IT Park, DMR Tower-II, 8th Floor,
Shastri Park, Delhi - 110053

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No. L-12012/07/2016-IR(B-I) Dated 25.01.2016 referred the following Industrial Dispute to this Tribunal for adjudication:-

“Whether the services of the workman Sh. Ranjan Kumar have been terminated illegally and/ or unjustifiably by the management and if so to what relief is he entitled and what directions are necessary in this regard?”

On 29.02.2016 reference was received in this Tribunal. Which was register as I.D. No. 07/2016 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Several opportunities given to workman to file his claim/statement but he failed. Hence his right of filing claim/statement has been closed on 15.03.2017.

I fixed 18.04.2017 for management to filing of response to reference if any.

On 25.04.2017 management filed response to reference. But refused to adduce any evidence. Hence No Dispute Award was reserved.

In want of evidence of both parties is a fit case to pass “No Dispute Award”.

Which is accordingly passed.

Dated: 26.04.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 5 जुलाई, 2017

का.आ. 1631.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम मध्य रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 76/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.07.2017 को प्राप्त हुआ था।

[सं. एल-41012/117/2007-आई.आर. (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th July, 2017

S.O. 1631.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 76/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Jaipur as shown in Annexure, in the industrial dispute between the management of West Central Railway and their workman, received by the Central Government on 05.07.2017.

[No. L-41012/117/2007-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY

PRESIDING OFFICER

I.D.76/2007

Reference No.L-41012/117/2007-IR(B-I)

Dated: 30.10.2007

Shri Laxminarayana Meena
S/o Sri Raghveer Meena
R/o Nangla, PWD Road,
Bajria, Tehsil Bayana,
Bharatpur.

V/s

1. The Divisional Railway Manager
West Central Railway
Kota (Rajasthan).
2. The Divisional Commercial Manager
West Central Railway
Kota (Rajasthan).

AWARD

18.7.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of West Central Railway, Kota through DRM, Kota in awarding punishment of compulsory retirement to Sri Laxmin Narayana Meena, Marker vide their order dated 9.2.2005, is legal and justified? If not, to what relief the workman is entitled and from which date?”

2. Briefly fact of the case is that applicant Sh. Laxminaryan Meena was appointed on 21.10.82 to the post of Marker against permanent vacancy from scheduled Tribe quota. A disciplinary proceeding was conducted against him and in consequence thereof he was compulsorily retired from the service vide office order dated 9.2.2005. The charge for which the applicant was held guilty was false accusation made by him against officers of the department. The appeal against the order of punishment preferred by applicant failed.
3. According to statement of claim in 1985 he was posted on ad-hoc basis to the post of Ticket Collector (T.C.)/Checker & continued till 1990. He was also given award by General Manager (AGM). Applicant participated in the examination conducted by the department to the post of T.C. & qualified the written examination on 8.1.1990 but his name did not appear in the declared list dated 22.2.1990 of successful candidates. Name of another applicant worker Sh. Girishchand (R), Bhisti also did not appear in the list dated 22.2.1990. It has been further alleged that vide order dated 3.3.1990 of Divisional Rail Manager, Kota list of successful candidates promoted to the post of Ticket Collector were published & their joining was given on railway stations on 4.3.1990 although Saturday & Sunday remains holiday in the office of DRM. Aggrieved with the list of successful candidates Sh. Girishchand(R), Sh. Premraj Meena &

others filed an O.A. No.122/90 before the Hon'ble CAT, Jaipur in which reply was submitted by Railway that name of the petitioners were not existing in the panel of successful candidates. Later O.A. No.122/90 was dismissed on 20.9.93 by Hon'ble CAT. Subsequent to this event & four year later after publication of the list of 1990 panel Sh. Girishchand (R), Bhisti was given promotion to the three successive grades of T.C., T.T.E. & C.T.C. with all financial benefits. Thereafter, applicant filed O.A. 1099/92 before the Hon'ble CAT to secure the benefits to a grade lower to the highest grade achieved by Sh. Girishchand(R) which was decided on 22.8.1994 directing the railway department to give the benefit to the applicant equivalent to the benefit made available to Sh. Girishchand (R), Bhisti. Opposite party has not preferred any appeal before the Hon'ble Supreme Court against the order of the Hon'ble Tribunal. When applicant was not extended the benefit equivalent to Sh. Girishchand (R), Bhisti, he preferred contempt application before the Hon'ble CAT wherein the department was ordered to comply the direction within four week. It has been alleged that aggrieved by the order of the Hon'ble CAT in contempt proceeding applicant was served with charge-sheet dated 5.9.2000 & was removed from service in mala fide way.

4. According to statement of para 7 of the claim charge sheet was issued on 8.9.2000 to the applicant on baseless & untrue grounds by an officer of the department who was not competent to issue the charge-sheet & documents relating to the charge were not supplied to the applicant on demand. Thus, without furnishing opportunity to the applicant to make reply against the charge enquiry proceeding was started ex-parte. Notice of the commencement of ex-parte enquiry proceeding was also not given to applicant & order of punishment was passed against the applicant ex-parte deeming the charges proved on the basis of ex-parte enquiry proceeding. It has been further alleged that punishing of the applicant on the basis of such ex-parte enquiry is not only illegal & unjust but also against the principle of natural justice.

5. It has been further alleged that order of punishment of compulsory retirement can be passed only by the appointing authority & not by any officer subordinate to him & according to the direction of railway board only such officer will be appointing officer who has really appointed the person & not the officer who is having only power to appoint. The order of punishment of compulsory retirement has not been passed by appointing officer, hence, the order of punishment of compulsory retirement is illegal. It has been further alleged that before passing the order of compulsory retirement applicant was not given opportunity of defence & personal hearing, hence, order of punishment is liable to be quashed.

6. It has been further alleged in para 9 of the claim that it has been mentioned in order of punishment that applicant was called repeatedly in enquiry proceeding but he kept on demanding additional documents & did not appear in enquiry proceeding. In this connection it has been alleged that according to directive of railway board if an employee does not participate in disciplinary proceeding then disciplinary proceedings conducted during his absence shall be treated as none providing of opportunity of defence & accordingly such ex-parte disciplinary proceeding shall be held to be illegal. If, applicant would have been provided with documents & given opportunity of appearance & participation in disciplinary proceedings then enquiry must have been impartial. Applicant had further demanded change of enquiry officer because impartial enquiry was not anticipated from him but despite many request the enquiry officer was not changed, on this ground also the enquiry is illegal & unfair. It has also been alleged that punishment awarded is excessive according to nature of charge.

7. According to allegation in para 13 of statement of claim enquiry was not completed within period of 60 days prescribed by Railway Board, hence, enquiry conducted against the violation of rule prescribed by Railway Board is liable to be quashed. Enquiry report & document related to enquiry proceeding were not supplied to the applicant at the time or prior to the time of compulsory retirement, hence, order of compulsory retirement is illegal & liable to be quashed.

8. In para 15 of statement of claim it has been alleged that before punishing with punishment of compulsory retirement applicant was not provided opportunity of defence according to Article 311(2) of Indian Constitution & despite the mentioning of documents in charge sheet neither documents were provided nor shown to the applicant & access to the documents were denied with contention that documents are secret. It has also been contended that under Rule 14(11) there is right of personal hearing to the appellant/applicant which was not provided, thus, order of punishment is unfair & illegal & liable to be quashed on the ground of violation of Rule 14(11). The punishment of compulsory retirement was ordered at the time when applicant had to bear greater responsibility of his family & his children were at the stage of schooling. The punishment has affected the education of the children beside future of the applicant, hence, order of punishment is liable to be quashed.

9. In reply to statement of claim it has been alleged in preliminary objection that applicant was charged for false accusation against the officer of the department in relation to written false complaint made by applicant about selection of candidate for promotion. While he was working on the post of 'Marker' he was served with charge sheet dated 5.9.2000 & punished after conclusion of enquiry with compulsory retirement for the breach of Rule 3.1(1) & (III) of Railway Service Conduct Rules, 1966. It has been further alleged that applicant is not entitled to any relief & statement of claim is liable to be dismissed.

10. In para wise reply to statement of claim it has been alleged that statements in paras 1, 2, 3 require no comment. Statement in para 4 has been partially admitted to the extent of appointment of applicant on 21.10.82, rest has been denied. Para 5 has been partially admitted & rest has been denied. It has been admitted that applicant was issued with charge sheet in relation to false complaint made by him regarding selection for promotion of candidates & was punished with compulsory retirement after completion of disciplinary proceeding. It has been further alleged that applicant submitted his appeal dated 23.2.2005 against the order of punishment to Divisional Commercial Manager on 9.11.2005 affixing forged stamp regarding receipt of the appeal which was disposed by appellate authority assigning sufficient reason & informing the applicant within time. Representation dated 20.3.2006 against the order of appellate authority was made by applicant & in reply to this representation a copy of the order of appellate authority was again sent to the applicant again vide letter dated 25.4.2006. The entire proceeding adopted against applicant by opposite party has been under Railway Service Rules. Against statements in Paras 6,7,8,9,10,11,12,13,14,15,16,17,19 it has been alleged that they are denied as alleged. Against para 18 it has been alleged that it requires no answer.

11. Further it has been alleged in para 7 & onward paras that after finding that complaint of the applicant was false he was served with a charge sheet by competent officer, Assistant Commercial Manager (ACM), Kota. On demand of related documents by the applicant before the competent authority (ACM) documents whose copy could not be given were made available for inspection to applicant but copies of the same were not made available on the ground of secrecy attached to the document & applicant was made aware of the fact that copies of the document are not being supplied on the ground of secrecy.

12. Further it has been alleged that repeated summons were sent to the applicant but owing to absence of applicant enquiry proceedings proceeded ex-parte. It has been further alleged that during enquiry proceeding there has been no breach of rule & enquiry proceeding has taken place following general rules & principles of natural justice. It has been further alleged that enquiry proceeding against the applicant has been done according to Railway Service Conduct Rules, 1966. In para 8 of the reply it has been alleged that despite entire documents mentioned in the charge sheet supplied to the applicant he failed to participate in enquiry proceeding. He was summoned many time to appear & participate in the proceeding putting his defence but applicant continued demanding additional documents & he did not appear in enquiry proceeding. Against the demand of additional documents applicant was replied in writing that he may demand additional documents from enquiry officer. Applicant demanded additional documents from enquiry officer & the enquiry officer had informed the applicant that documents are secret, hence, copy of the documents cannot be supplied. Beside the reply that copy of the documents cannot be given to the applicant, applicant was shown the documents during enquiry on 5.4.2002, yet applicant failed to appear during enquiry proceeding. In above circumstances, charges having been found proved against the applicant he was punished by competent officer with compulsory retirement from service. **It has been further alleged that under disciplinary rule there is no compulsion to provide opportunity of hearing to an employee before imposing the punishment of compulsory retirement from service & Applicant also in representation dated 6.5.2004 had not made any request in this regard, hence, opposite party has not committed breach of any disciplinary rule.** Further in para 8 it has been alleged that the officer was fully competent & authorised to pass the order of compulsory retirement which is in conformity with law, hence, applicant is not entitled to any relief from the tribunal.

13. In para 9 it has been further alleged that copy of all the documents were supplied to the applicant as mentioned in the charge sheet. Additional documents demanded by applicant were made available by enquiry officer to the applicant for inspection but there copies were not supplied because of their secrecy & applicant was told about this thing during enquiry. Due to none appearance of applicant despite repeated summon enquiry was completed ex-parte & copy of the enquiry report was given to the applicant within time & he was given opportunity to provide his defence during the enquiry. Contention of the applicant is completely untrue that during enquiry he asked the enquiry officer to show & supply the copies of all the documents & he was denied the same with reply that they are secret documents. Opportunity of inspection of the documents were provided to the applicant whose copies could not be supplied to him on account of secrecy & applicant inspected those documents. On 28.2.2002 during preliminary enquiry applicant was given explanation regarding additional documents demanded by him & had raised no objection at that time which should have been raised if, there was any objection. Applicant was also repeatedly asked to give the name of his defence representative but applicant failed to name his defence representative. In above circumstances, enquiry proceeding conducted by opposite party has been according to rules.

14. It has been further alleged in para 10 that after repeated summons if workman remains absent during enquiry proceeding then ex-parte enquiry may be concluded against him according to rules. It has been further alleged that demand of the applicant to change the enquiry officer was considered by competent officer but the demand was not found just & applicant was informed about the decision of the not changing the enquiry officer. The order of compulsory retirement against the applicant is due to his misconduct against the Railway Service Conduct Rules, 1966 & accordingly the contention of the applicant is entirely wrong that action against him is mala fide. It has been further alleged that O.A. No.1099/92 presented by applicant in this matter was adjudicated by Hon'ble CAT on 22.8.1994 & contempt proceeding initiated by applicant was dismissed by the Hon'ble CAT on 6.12.2000. The order of punishment is in compliance with disciplinary rules. Applicant is not entitled to any relief from the tribunal under provision of Industrial Disputes Act, 1947. Applicant has been provided full opportunity to present his reply. He has been called

repeatedly to appear in enquiry proceeding & due to his deliberate failure to appear ex-parte enquiry proceeding was adopted.

15. In para 14, 15 & 16 of the reply to the statement of claim it has been alleged that copy of enquiry report & document related to the enquiry proceeding were given to the applicant prior to his compulsory retirement from the service & entire disciplinary proceeding has taken place against the applicant in accordance with law. Applicant was provided opportunity to present his case & defence during entire proceeding. On demand by applicant all concerned documents were made available to the applicant for inspection & perusal by enquiry officer & only copy of the secret documents were not provided & applicant was informed that copies are not being provided because the documents are secret. Secret documents were also allowed to be inspected & extract of the same allowed to be noted as required by applicant. Further it has been alleged that the applicant affixed the forged stamp regarding receipt of appeal on 23.2.2005 & submitted it on 4.11.2005 to Divisional Commercial Manager & the disposal of appeal was made by appellate authority informing the applicant. The ex-parte enquiry proceeding has taken place against the applicant according to rule & ex-parte proceeding was done due to none appearance of the applicant.

16. It has been alleged in para 17 of the reply that none co-operative approach of the applicant is clearly revealed & confirmed from the entire enquiry proceeding & punishment awarded to the applicant by disciplinary authority is just & legal. Further it has been alleged that statement of claim is liable to be dismissed with cost.

17. In rejoinder, reply to statement of claim has been said to be baseless, fabricated, untrue & not based on record. In rejoinder allegations in the statement of claim have been reiterated.

18. Heard the argument of learned representative of both the parties & perused the record carefully. Written argument by applicant has been filed on record. No written argument & judicial precedents have been filed by opposite party. Following rulings have been filed on behalf of applicant :-

1. 1969 S.L.R. 479, Mysore High Court, A.K. Narain.....Petitioner V/s. the General Manager, Southern Railway & Others.... Respondent.
2. 1967 S.L.R. 759, S.C. Tirlok Nath.... Petitioner V/s. Union of India & others.... Respondent.
3. AIR 1972 S.C. 2452, The Management of D.T.U.Petitioner V/s. Sh. B.B.L. Hajelay and another Respondent.
4. AIR 1979 S.C. 1912, Krishna Kumar..... Appellant v/s. the Divisional Assistant Electrical Engineer and others Respondent.
5. AIR 1986 S.C. 2118, Kashinath DikshitaAppellant V/s. Union of India & others Respondent.
6. AIR 1957 S.C. 882 Union of IndiaAppellant V/s. T.R. Verma Respondent.
7. AIR 1954 ALL 438, Laltr Prasad.....Appellant V/s. Inspector general of Police and others Respondent.
8. AIR 1958 S.C. 300, Khemchand.....Appellant V/s. Union of India & others Respondents.
9. AIR 1961 S.C. 1623 state of Madhya PradeshAppellant V/s. Chairman Sadashiva Waishampayan Respondents.

19. On 22.9.2015 applicant has filed order of Hon'ble High Court dated 10.9.2015 wherein direction has been made to dispose this case within six months & further parties have been directed to co-operate with tribunal in early disposal of the case. According to expectation of the applicant attempt was made to have the award prepared in Hindi language & a major portion of the time was consumed in Hindi typing. Before the award could be completed the concerned clerk proceeded on long leave hence, award writing was undertaken afresh in English language.

20. It has been argued by the learned representative of the applicant orally & also on page 2 & 3 of the written argument that applicant had demanded the copy of the complaint dated 15.9.99 alleged to have been made by applicant which was not given to him & he has also mentioned this fact in the proceeding of the enquiry dated 5.4.2002 (Annex-25) hence, in absence of the alleged copy of the complaint applicant could not prove that the allegation of making complaint against him is false. It has also been argued that non-supply of the copy of the document is violation of Article 311 of the Indian Constitution. Reliance has been placed on the cases reported in 1969 S.L.R. 479, Mysore High Court, A.K. Narain.....Petitioner v/s the General Manager, Southern Railway & Others.... Respondent & 1967 S.L.R. 759, S.C. Tirlok Nath.... Petitioner v/s Union of India & others.... Respondent. The applicant has further alleged about the complaint dated 15.9.99 sent to vigilance office that the alleged complaint was neither shown to the applicant nor applicant was asked by enquiry officer that applicant has made this complaint or not. Further, it has been alleged that copy of the complaint was not given by the tribunal also when applicant applied for the copy of the said complaint & no order was passed by the tribunal to supply the copy of the alleged complaint hence, charge against the applicant for making the alleged complaint is not proved. Further, it has been argued that applicant in statement of claim & his affidavit dated 18.5.2011 had said that charge against him is wrong, false & fabricated & Shri S.N.Salim,

Vigilance Inspector has deposed before the enquiry officer that he was assigned the work of investigation in relation to complaint dated 15.9.99 but the copy of the complaint was not given to applicant on demand through his application dated 18.2.2001. It has been further alleged that applicant in his affidavit dated 18.5.11 has alleged that he has not made the complaint dated 15.9.99 & might have been made by the opposite party itself hence, punishment awarded on the basis of such charge memo is void & original copy of the alleged complaint has not been filed before the tribunal & instead of complaint dated 15.9.99 some false complaint dated 6.9.99 has been filed before the tribunal hence, charge is not proved against the applicant. It has been further alleged that applicant in his rejoinder & affidavit dated 18.5.11 has said that he did not sent any complaint to the vigilance & if there is any complaint existing as such the same is false & have been made by some miscreants but neither during preliminary enquiry any query was made from applicant by enquiry officer nor attention was given by tribunal towards the contention made in rejoinder, affidavit & written argument of the applicant whereas the enquiry report was unfair & it should have been declared unfair & fresh enquiry should have been conducted by tribunal. It has been further alleged that in the order dated 22.1.2016 on fairness of enquiry complaint dated 6.9.99 has been shown whereas the charges is based on the complaint dated 15.9.99 on which order of punishment has been based hence, charge is liable to be dismissed.

21. Against above argument it has been argued by the learned representative of the opposite party that entire argument of the applicant is connected with fairness of enquiry & on 20.1.2016 order has already been passed by tribunal on the point of fairness of enquiry & tribunal is not having propriety to review the order dated 20.1.2016. In relation to providing copy of charge sheet & document related with charge sheet & copy of other documents not related with charge sheet it has been argued against the argument of applicant that copy of all the documents related to charge sheet have been given to the applicant & documents whose copies have not been given on the ground of secrecy such document have been shown to the applicant with permission to make note of any relevant information desired by the applicant & nothing has been done by opposite party in relation to documents in violation of principle of natural justice. In this regard reference has been made to receipt of document by applicant dated 3.11.2000 & note made by applicant in his Annexure-25 in relation to document wherein it has been alleged that documents demanded by applicant relating to enquiry has already been given to him on 28.2.2002. It has been further argued with reference to enquiry proceeding dated 28.2.2002 that proceeding dated 28.2.2002 was the last proceeding in relation to documents & applicant on 28.2.2002 went satisfied after enquiry proceeding in relation to documents & 5.4.2002 was next date fixed according to his satisfaction. It has been further alleged that on 28.2.2002 applicant departed after enquiry alleging that he will come prepared to participate on 5.4.2002 but he never turned up thereafter & entire attempt of the enquiry officer & management to secure his presence in enquiry failed whereupon enquiry officer was compelled to proceed ex-parte during enquiry proceeding against the applicant. It has been further argued that affidavit dated 18.5.2011 filed by applicant is irrelevant & needless & charge against the applicant have been proved & argument of the applicant is liable to be rejected.

22. Before I proceed to discuss the issues connected with arguments of both the parties, it is necessary to mention that order on fairness of enquiry has already been passed on 20.1.2016 & It has been held that there was no denial of fair play to the applicant & the enquiry conducted against him is found fair & proper. From the side of applicant again points relating to providing of documents have been raised connected with fairness of enquiry at the time of present final disposal of the case hence, it is possible that there may be occasionally discussions of the connected facts already taken during fairness of enquiry at the cost of repetition.

23. The complaint alleged to be made by applicant Laxminarayan to Chief Vigilance Officer is available on record as mentioned below :-

सेवा में,

श्रीमान डी. के. गुप्ता जी,
वरिष्ठ उपमहाप्रबन्धक
एवं मुख्य सतर्कता अधिकारी
पश्चिम रेलवे, प्रधान कार्यालय
चर्च गेट, मुम्बई - 20

विषय : उच्च पदस्थ अधिकारियों एवं उनके सहयोगियों द्वारा भ्रष्ट आचरण करके पदोन्नति में भेदभाव बरतना।

महोदय,

मैं स्वयं पीड़ित होने के कारण आपसे न्याय मिलने की प्रत्याशा में आपसे निम्नांकित निवेदन करता हूँ कि मैं दिनांक 21.10.1982 से मार्कर पद मय वेतनमान 210-290 (आर.) पद पर पश्चिम रेलवे के कोटा मण्डल पर नियुक्त किया गया था। वर्ष 1985 से 1990 तक प्रार्थी की दक्षता को ध्यान में रखते हुए टिकट संग्राहक पद पर मुझे तदर्थ आधार पर पदस्थ किया गया था, जहाँ मैंने सफलता पूर्वक अपने कर्तव्य का निर्वहन किया। वर्ष 1990 में टिकट संग्राहक पद हेतु परीक्षा आयोजित की गई जिसमें मैं मण्डल कार्यालय कोटा के पत्रांक ई.टी./1025/8/भर्ती 3/दिनांक 8..... के अनुसार मुझे लिखित परीक्षा में उत्तीर्ण घोषित किया गया। तत्पश्चात् मुझे किन्ही निहित स्वार्थीवश तत्कालीन अधिकारियों ने दिनांक 22.2.90 की चयन सूची में नहीं सम्मिलित किया गया जिसमें मेरे जैसे अन्य श्री गिरीश चन्द सुपुत्र श्री रामप्रसाद भिस्ती कोटा भी थी। श्री गिरीश चन्द ने इस बाबत केन्द्रीय प्रशासनिक अधिकरण जयपुर बैंच (केट) के अधीन औ.एस. 122/90 लगाई जिसे उक्त न्यायालय ने आदेश दिनांक 20.9.93 के द्वारा निरस्त कर दिया। उक्त प्रकरण में सी.बी.आई. द्वारा भी अन्वेषण

के पश्चात् श्री गिरीश चन्द को अनुत्तीर्ण ठहराया गया था। डी.पी.औ. कोटा तथा स्वयं श्री गिरीश चन्द द्वारा न्यायालय में श्री गिरीश चन्द के अनुत्तीर्ण होने बाबत एक शपथ पत्र भी पेश किया गया। वर्ष 1990 से 1998 के मध्य श्री गिरीश चन्द रेलवे सेवा से अनुपस्थित भी रहे उसका भी रेलवे द्वारा भुगतान कर दिया गया है।

परन्तु इस सब को ताक पर रखकर श्री गिरीश चन्द से भारी रूपयों को लेकर चार वर्ष बाद कार्यालय आदेश सं. ई.टी. /1025/भाग 3 दिनांक 21.1.94 द्वारा टिकिट संग्राहक बना दिया गया तथा उसे पिछली तारीख 22.2.90 से ही टिकिट संग्राहक का लाभ भी दे दिया गया है। मुझसे तत्कालीन अधिकारियों ने श्री गिरीश चन्द के समकक्ष पदोन्नति लाभ देने बाबत भारी रूपयों की मांग की परन्तु मुझे ये गवारा नहीं था, मैंने मजबूर होकर केन्द्रीय प्रशासनिक अधिकरण (केट) जयपुर बैंच के अधीन उक्त अधिकारी के खिलाफ वाद दायर कर दिया। जिस पर उक्त न्यायालय ने मुझे श्री गिरीश चन्द समकक्ष ट्रीटमेंट देने हेतु निर्णित क्र. ओ.ए.नं. 1099/92 दिनांक 22.8.94 में दिया गया। इस निर्णय के विरुद्ध ना तो रेलवे प्रशासन ने कोई अपील ही दायर की है और ना ही मुझे श्री गिरीश चन्द के समकक्ष पदोन्नति लाभ ही दिया है। एक उच्च वर्ग के डी.पी.औ. श्री संजय सिंह तथा अब उनके स्थान पर आये श्री रामावतार शर्मा जो कि पहले भी इस प्रकरण को डील कर चुके हैं मुझसे 40 हजार रुपये की मांग बतौर रिश्वत मांगी थी। मैंने पैसा नहीं दिया तो मुझे मेरे संवैधानिक अधिकारी "विधि के समक्ष समानता" से भी वंचित कर दिया है मेरे पास और भी पर्याप्त कागजी प्रमाण इस प्रकरण से सम्बन्धित उपलब्ध है। मैं उपरोक्त तथ्यों को सत्य प्रमाणित करता हूँ तथा आशा करता हूँ कि कृपया निष्पक्ष जांच कर दोषियों को दण्डित करेंगे और मुझे पदोन्नति टिकिट संग्राहक पद पर श्री गिरीश चन्द के समकक्ष प्रदान करेंगे।

धन्यवाद

प्रार्थी

हस्ताक्षर पठनीय

(लक्ष्मीनारायण मीणा)

पद —मार्कर

अधीन स्टेशन प्रबन्धक प.

प. रे. आगरा किला

दिनांक 6.9.99

संलग्न आदेश

1. केन्द्रीय प्रशासनिक अधिकरण (सेन्ट्रल एडमिनेस्ट्रेटिव) ट्रिब्यूनल के आदेश संख्या जयपुर बैंच ओ.ए.नं. 1099/92 दिनांक 22.8.94

2. श्री गिरीश चन्द के आदेश टिकिट संग्राहक

दिनांक 21.1.94

3. पैनल दिनांक 22.2.90 का जिसमें गिरीश चन्द का नाम नहीं है।

24. It is important to mention that applicant's complaint dated 15.9.99 is the first document of the charge sheet which is available on the record as complaint dated 6.9.99 instead of complaint dated 15.9.99. This change in date from 15.9.99 to 6.9.99 has been made a ground by the applicant & argued that neither there is complaint dated 15.9.99 nor its copy has been given to the applicant hence, entire allegation of the management is fabricated that applicant had made a complaint dated 15.9.99. Against this, it has been alleged by learned representative of opposite party that applicant has been instrumental in securing interpolation in the document & somehow his aim is to show some shortcoming in the enquiry proceeding. It has been further alleged that appearance of date 6.9.99 on the complaint dated 15.9.99 is the result of wrong act of the applicant because content of the complaint is same which is showing the date 6.9.99 instead of 15.9.99 & appearance of date 6.9.99 is the result of wrongful act of the applicant. It has been further alleged that applicant has received the copy of the complaint dated 15.9.99 & has accepted making this complaint dated 15.9.99 during enquiry proceeding on 22.12.99 before Shri S.N.Salim, Chief Vigilance Inspector hence, if applicant denies making complaint dated 15.9.99 or its content then it is responsibility of the applicant to prove that which is the complaint whose copy has been received by him on 3.11.2000 & has been accepted before S.N.Saleem, Chief Vigilance Inspector to have been made by him to vigilance department. It has been further argued that argument of the applicant in relation to complaint dated 15.9.99 is irrelevant, baseless & based on untruth. It is pertinent to mention here that after order of fairness of enquiry dated 22.1.2016 applicant applied before the tribunal for copy of complaint dated 15.9.99 which was not supplied in view of the fact that complaint is available on record but it bears the date 6.9.99 instead of 15.9.99. To clarify this point & secure a better solution to this issue that complaint dated 6.9.99 existing on record is same i.e. dated 15.9.99 opposite party was directed by tribunal on 4.4.2016 to file the original complaint dated 15.9.99 on record. The order dated 4.4.2016 was made so that it's copy may be supplied to the applicant & the fact of making change from 15.9.99 to 6.9.99 may be clarified undisputedly beside comparing the contents of original complaint & the complaint dated 6.9.99 existing on record but on 12.4.16 written information was submitted by opposite party that original complaint dated 15.9.99 was missing and not found in record room & confidential department of the Railway. From the above fact & circumstances, I am of the view that there is no reason to extend to the applicant any benefit because of loss of original complaint from the record because original complaint was existing on enquiry record during enquiry proceeding & photocopy as well as certified copy of the complaint has been received by the applicant during enquiry proceeding. It is also pertinent to note that no such claim has been made

by applicant in his statement of claim or rejoinder that complaint dated 15.9.99 did not exist. No benefit can be extended to the applicant due to any interpolation in the complaint or its loss subsequent to enquiry proceeding & if the complaint dated 15.9.99 was not existing then it must have been raised at the time when its copy was supplied to the applicant. No such objections were raised because nothing wrong connected to the complaint was existing at the time when copy of the complaint was delivered to the applicant. In above fact & circumstances, I am of the view that contention of the applicant is wrong that complaint dated 15.9.99 was not existing & its copy was not supplied to him. From bare perusal of the photocopy of the complaint dated 6.9.99 existing on record it is evident that digit 1 has been erased out of digit 15 & typed digit 5 has been converted into 6 by hand. Complaint dated 15.9.99 was existing & it was made by applicant, this fact has been admitted by applicant in para 6 of his representation dated 6.5.2004 against enquiry report dated 20.9.2000 which reads as under:—

6. आपसे न्याय हित में विनम्र प्रार्थना है कि कृपया उक्त खण्डन योग्य जांच रिपोर्ट को निरस्त करें तथा पुनः नियमानुसार जांच किसी निष्पक्ष और ईमानदार अधिकारी जो कि यदि अनुसूचित जाति अथवा अनुसूचित जनजाति का हो, से करवाने की कृपा करें। यहां यह तथ्य उल्लेखनीय है कि जिन अधिकारी श्री रामावतार शर्मा के विरुद्ध मैंने शिकायत की थी वह वर्तमान में उप मुख्य कार्मिक अधिकारी प्रधान कार्यालय, जबलपुर में तैनात है तथा अपने पद एवं प्रभाव का भरपूर उपयोग करते हुए जांच कार्य को प्रभावित कर सकते हैं तथा पूर्व में भी उन्होंने श्री एस. पी. दीक्षित ब्राह्मण होने के कारण अपने पक्ष में प्रभावित किया है। अतः जांच अधिकारी की नियुक्ति करते समय उक्त बिन्दुओं को भी ध्यान में रखा जाना न्यायहित में आवश्यक है।”

25. Further it is important to note that in his receipt/acknowledgement dated 3.11.2000 applicant has acknowledged the receipt of his complaint dated 15.9.99 & copy of his statement dated 22.12.99 before Chief Vigilance Inspector. After 3.11.2000 further applicant on his demand has been provided with certified copy of these two documents along with others & he has furnished receipt dated 22.2.2001 for the same. Looking into admission of the applicant in para 6 of his representation & his receipt dated 3.11.2000 & 22.2.01 I am of the view that contention of the applicant is wrong & baseless that he did not make the complaint dated 15.9.99 & there was no such complaint in existence & he was not supplied with the copy of the complaint.

26. As far as filing of affidavit dated 18.5.11 in support of his contention by the applicant is concerned this affidavit was filed by him as evidence on the basis that applicant was required to file evidence in support of his claim but filing of affidavit in evidence was not required to be filed by the parties as mentioned by the learned presiding officer in order dated 1.6.12. Thus, statement of applicant on affidavit dated 18.5.11 carried no evidential value which is uncross-examined.

27. As far as the question of delivery of copies of documents relating to charge sheet & copies of those documents not related to charge sheet to the applicant is concerned, I find it necessary & proper to mention brief detail of date wise proceedings & events which will help in appreciating the entire written & oral argument of the parties. The date wise events are as under:-

28. It is pertinent to mention that on 3.11.2000 applicant has submitted to the management receipt of all the 7 documents relating to charge sheet wherein hindi version of charge sheet has also been given. At the time of receiving these documents applicant has made note on the receipt that documents 1 to 7 mentioned in Annex-III of charge sheet are illegible & uncertified hence, reply cannot be made. It was necessary on the part of applicant not to receive the documents which were illegible but he did not do so. The fact of receipt of these documents has been admitted by applicant in his letter dated 10.12.2000 addressed to disciplinary authority also wherein he has demanded legible & certified copies. As additional documents he has demanded answer sheets of Sh. Girishchand, copy of valuation table & marks awarded in interview, copy of vigilance enquiry report relating to Sh. Girishchand & copy of order of Railway board on the basis of which Sh. Girishchand was declared successful, copy of order recommending name of Sh. Girishchand to be included in the list of successful candidates & copy of statement of Sh. S.N.Salim, Chief Vigilance Inspector. In reply to applicant's demand letter dated 10.12.2000 Sh. A.P.Mishra, disciplinary authority/ Assistant Commercial Manager, Ist, Kota vide his letter dated 13.2.2000 through Station Manager, Kota, under whom applicant was working, has sent certified & legible copy of all the documents related to charge sheet & requested the applicant that beside the documents sent by him whatever other documents are required they may be demanded from the enquiry officer during enquiry. On 22.2.2001 applicant has received all the documents sent by disciplinary authority vide his letter dated 13.2.2001. Applicant has again sent a demand letter dated 18.2.2001 reiterating the contention of letter dated 10.12.2000.

29. While receiving documents on 22.2.2001 applicant has again made note on receipt that administration is not providing documents mentioned in charge sheet despite repeated reminders & reply to the charge sheet will be submitted only after availability of documents. In the meantime DRM vide his letter dated 14.3.2001 has informed the applicant to nominate the defence representative within 10 days so that concerned person may be relieved to appear before the enquiry officer. Station Manager, Kota has returned the letter dated 14.3.2001 on 26.4.2001 with endorsement that applicant is absenting himself since 7.3.2001. Letter dated 14.3.2001 has been received by applicant on 2.6.2001 & acknowledgement in this regard is available on record. Enquiry officer Sh. Gopinathan vide his letter dated 9.4.2001 through Station Manager, Kota has informed the applicant to appear in enquiry proceeding on 27.4.2001. Enquiry Officer has further requested the applicant to send the name of three defence representative in order

of merit so that attendance of defence representative may be ensure on 27.4.2001. Further enquiry officer has written to DRME/KTT to ensure the attendance of applicant on 27.4.2001 in enquiry proceeding.

30. Applicant did not appear before enquiry officer on 27.4.2001. The enquiry officer vide his letter dated 1.5.2001 informed DRM/E/Kota about non-appearance of the applicant during enquiry & also the fact that no information was received from applicant about his non-appearance & further that enquiry officer knew about illness of applicant through the office of the DRM/E/Kota hence, it was requested by enquiry officer that after arrival of the applicant back from illness enquiry officer may be intimated about his joining the duty. After resumption of duty by applicant enquiry officer Sh. Gopinathan vide his letter dated 1.6.2001 through Station Manager informed the applicant to appear in enquiry proceeding on 18.6.2001 with further direction to Station Manager to relieve the applicant for participation in enquiry proceeding. The enquiry officer further wrote to DRM/E/Kota to ensure the attendance of applicant & his defence representative.

31. Thereafter, applicant again vide his letter dated 7.6.2001, repeating his earlier demand through letter dated 18.2.2001, wrote to disciplinary authority about demand of documents. Applicant returned the letter of enquiry officer dated 1.6.2001 with note dated 14.6.2001 that he has made four reminders to the administration but he has not been provided copy of the documents & unless he receives the documents he can neither give the reply nor name the defence representative. He further noted that enquiry may be cancelled & first documents be made available. Applicant did not appear in enquiry proceeding on 18.6.2001. The enquiry officer again vide his letter dated 19.6.2001 in English language wrote to the applicant providing an additional opportunity to appear in enquiry on 6.7.2001 at Churchgat, Mumbai directing Station Manager, Kota to relieve the applicant for his appearance at Churchgat, Mumbai on 6.7.2001. He further informing about absence of applicant on 1.6.2001 requested DRM/E/Kota to ensure the attendance of the applicant on 7.6.2001. It was further pointed out by enquiry officer in his letter to the applicant that applicant did not appear in enquiry proceeding on 18.6.2001 & he did not inform about non-appearance to the enquiry officer.

32. In reply to the letter of applicant dated 7.6.2001 regarding documents it was intimated by disciplinary authority to the applicant vide letter dated 21.6.2001 that certified copies of all the documents mentioned in Annex-3 of charge sheet has already been given to the applicant & regarding other documents applicant may submit the demands before the enquiry officer. Letter of disciplinary authority dated 21.6.2001 was returned by applicant with note dated 24.6.2001 that copy of the demanded documents are not attached with the letter. On the letter of enquiry officer dated 19.6.2001 applicant made a note on 23.6.2001 asking enquiry officer to make correspondence in Hindi & not in English language. He further wrote that he has not been provided with copies of demanded documents. Remaining portion of the note make no meaningful sentence. In continuance of letter of enquiry officer dated 19.6.2001 the disciplinary authority vide his letter dated 28.6.2001 wrote to the applicant that he did not appear on 18.6.2001 in Kota in enquiry proceeding & enquiry officer has provided further one opportunity to appear for enquiry on 6.7.2001 hence, applicant is directed to appear on 6.7.2001 for enquiry & in case of his absence it will be presumed that he does not want to participate in enquiry proceeding & accordingly next date will be fixed for regular enquiry. Applicant was further asked by disciplinary authority to name the defence representative with direction that applicant has been informed earlier that he can make demand of additional documents from enquiry officer during enquiry proceeding. Disciplinary authority has further endorsed the copy of the letter to Station Manager to secure the receipt of letter from the applicant & ensure the attendance of applicant in enquiry. Returning back the above letter of disciplinary authority dated 28.6.2001 applicant has made note dated 29.6.2001 on the letter that he does not want the enquiry to be conducted by Sh. K.Gopinathan because documents are not made available to him by administration & till the documents are not made available to him he does not want conduct of the enquiry. Further, on 26.6.2001 applicant has again written to disciplinary authority for change of enquiry officer with copy to enquiry officer with allegation against enquiry officer of fixing short dates & discrimination etc. demanding enquiry to be conducted by a Hindi speaking enquiry officer. Applicant further wrote a letter dated 4.7.2001 to disciplinary authority/ACM wherein he demanded the copy of C.B.I. report. The application of the applicant for change of enquiry officer was allowed & Sh. S.P.Dixit was appointed as another enquiry officer on 30.8.2001. The applicant was informed about change of enquiry officer by disciplinary authority vide letter dated 17.9.2001. The applicant about his letters dated 10.12.2000, 26.6.2001 & 4.7.2001 regarding documents has been directed that he can present the demands of additional documents before the enquiry officer. The applicant on receipt of the letter dated 17.9.2001 on 21.9.2001 has mentioned that he has not been provided with copy of C.B.I. report & documents mentioned in the charge sheet by the administration.

33. The new enquiry officer Sh. S.P.Dixit vide his letter dated 20.11.2001 directed the applicant to appear for enquiry on 10.12.2001 & asked him to furnish the list of additional relevant documents required by him on the date of enquiry on 10.12.2001. The Station Manager, Kota vide his letter dated 29.11.2001 returned the letter of enquiry officer dated 20.11.2001 with note that applicant workman is absent without information since 19.10.2001. After 10.12.2001 next date for enquiry was fixed on 4.2.2002 wherein applicant appeared & participated on 4.2.2002. In the meantime the enquiry officer vide his letter dated 28.1.2002 wrote to the disciplinary authority mentioning the list of documents to be made available on 4.2.2002 to be given to the applicant as per his demand which was replied by disciplinary authority on 6.2.2002. On 4.2.2002 during enquiry Sh. Laxminarayan Meena submitted the list of desired documents to the enquiry officer & next date 28.2.2002 was fixed for enquiry. Proceeding dated 28.2.2002 contains detailed discussion between enquiry officer & applicant on the list of document demanded by applicant & possibility of

copies which may be given to the applicant. There has been discussion on eight documents & document mentioned at serial no.8 has been given immediately which is judgement order dated 6.12.2000 of Hon'ble CAT, Jaipur in C.P.No. 142/94 related to O.A. No.1099/92. O.A. no.1099/92 is a petition which has been decided in favour of applicant directing the respondent management to consider the case of the applicant Sh. Laxminarayan Meena in the light of subsequent order passed by respondent in favour of Sh. Girishchand & to see that equal treatment is given to applicant according to law within a period of three months from the date of receipt of copy of the order dated 22.8.94 passed in 1099/92. Contempt petition No. 142/94 Laxminarayan Meena.....petitioner v/s. Sh. M.Sirazuddin, DRM, WR, Kota & others.....respondents, was dismissed on 6.12.2000. The document mentioned at serial No.7 has been alleged to be related to Girishchand & unrelated to charge memo, yet, the enquiry officer has ensured that if applicant wants that document it will be made available to him during enquiry. Document mentioned at serial No.6 is judgement order dated 20.9.93 in O.A. No.122/90. It has been alleged by enquiry officer regarding this document that applicant can secured this document from the court & it is not related to charge memo. It is pertinent to mention that O.A. No.122/90, Premraj & others v/s. Union of India & others decided on 20.9.93 was dismissed by Hon'ble CAT, Jaipur in which Girishchand was one of the petitioner. In spite of dismissal of the petition respondents have passed the order in favour of Girishchand vide letter No. ET/1025/8 vol.III dated 21.1.94. It was the order dated 21.1.94 which resulted into filing of O.A. No. 1099/92 by applicant Laxminarayan Meena which was decided on 22.8.94 in his favour. Document mentioned at serial No.5 is related to absence of Sh. Girishchand which has been alleged to be unrelated with charge memo. Document mentioned at serial No. 2 is related to placing the name of Sh. Girishchand on the panel of successful candidates according to the order of Railway Board dated 21.1.94 as mentioned above. It has been mentioned about document at serial no.2 that copy of the order dated 21.1.94 has already been given to the applicant & about order of the Railway Board it has been alleged that it is a secret document & its copy cannot be given to applicant. Document at serial No.4 is related to Girishchand about placing his name on panel dated 22.2.90 of successful candidates at serial No.28-A just below Sh. Omprakash. Document mentioned at serial No.3 is related to answer sheet of Sh. Girishchand & it has been alleged that this document is secret & has been shown before the Hon'ble Tribunal & the Hon'ble tribunal in judgement order in O.A. No.1099/92 has held that applicant secured 45% mark whereas Sh. Girishchand secured 65% mark. Serial No.1 is related to C.B.I. report demanded by applicant. It has been alleged about this document that copy of the C.B.I. report is not given to workman & it has not been shown in the charge sheet also & there is provision of cross examination on the facts during enquiry. After above entire discussion about the documents at the end of the proceeding for the day the enquiry officer has mentioned as under:—

“श्री लक्ष्मीनारायण Co जी ने बताया कि इस केस के सभी दस्तावेज करके, तथा सलाहकार द्वारा सलाह ले कर जॉच के लिए तैयार होंगे इस लिए जॉच के लिए करीब 1 माह का समय दिया जाय अगली RH की तारीख 5.4.2002 रखी जाती है।

Co श्री लक्ष्मीनारायण जी को सलाह दी गई कि Defence Council (DC) सलाहकार की नियुक्ति करके पहिले सूचित कर दें जिससे उनको दि. 5.4.2002 की जॉच में बुलाया जा सके।”

हस्ताक्षर अपठनीय

हस्ताक्षर नहीं

हस्ताक्षर अपठनीय

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E.O.

34. At the end of proceeding on 28.2.2002 relating to documents as indicated above it is evident that according to the choice of applicant 5.4.2002 was next date fixed for regular hearing & applicant left the place of enquiry after ensuring his appearance on 5.4.2002. At the end of the proceeding on 28.2.2002 there emerged no dispute in relation to documents & applicant left the place with satisfaction on the point of documents. If there was any dissatisfaction the applicant must have raised that at the end of proceeding but he did not show any dissatisfaction on 28.2.2002.

35. Prior to date of enquiry on 5.4.2002 enquiry officer vide his letter dated 6.3.2002 again requested the applicant to provide consent regarding defence representative so that he may be intimated to make appearance on 5.4.2002 during enquiry. He further requested that if applicant is not interested in giving consent for defence representative he must ensure his presence on 5.4.2002. Further, vide letter dated 14.3.2002 the enquiry officer informed the applicant that if he requires any other document during enquiry that too may be considered. The enquiry officer during enquiry on 5.4.2002 assured the applicant to give him copy of the document on 5.4.2002 itself relating to inclusion of name of Sh. Girishchand on the panel dated 22.2.90. On 5.4.2002 applicant was also shown the order of Railway Board which was said to be a secret document on the basis of which Sh. Girishchand was promoted & his name was added on the panel of successful candidates. Applicant was also shown the documents 1 to 7 relating to letter dated 8.2.2000 which were said to be secret documents. At the end of proceeding on 5.4.2002 applicant told the enquiry officer that without Hindi version he is unable to read the documents & unless he is provided with Hindi version of the documents & the documents mentioned in charge sheet he is unable to participate in the enquiry & further without aid of counsellor he cannot continue with the enquiry. For the next date of enquiry proceeding on 17.6.2002 summon by registered post was returned back from the applicant by refusal & applicant remained absent in enquiry proceeding on 17.6.2002. Vide letter of Station Manager, Kota dated 18.7.2002 information was received that applicant is absenting himself since 18.4.2002. It is pertinent to mention that 5.4.2002 was date fixed for recording the evidence of witness during regular proceeding but that date was utilized for inspection & perusal of the documents by applicant which were alleged to be secret document. Applicant was permitted to note the extracts from the document. For the next dates of enquiry on 19.7.2002 & 14.8.2002 summons sent to applicant by registered post were received back because the applicant refused

to receive them. For the next date of enquiry on 28.8.2002 applicant was intimated vide letter dated 14.8.2002 informing that if applicant fails to appear in enquiry on 28.8.2002 the enquiry proceeding against the applicant shall proceed ex-parte. Applicant did not appear on 28.8.2002 & the enquiry against him proceeded ex-parte & statement of Sh. S.N.Salim, Chief Vigilance Inspector was recorded.

36. Detail of proceeding dated 28.8.2002 with statement of Sh. S.N. Salim was sent to applicant by registered post vide enquiry officer's letter dated 1.10.2002 asking the applicant to sent his defence (brief) wherein applicant was provided 10 days time from the date of receipt of proceeding dated 28.8.2002. The proceeding dated 28.8.2002 was received by applicant but defence (brief) was not sent by him to enquiry officer till the date of preparation of enquiry report on 31.10.2002. The enquiry report dated 31.10.2002 was submitted to disciplinary authority.

37. It is important to mention that Sh. S.P. Dixit, enquiry officer after his appointment has worked in presence of applicant only on three dates i.e. 4.2.2002, 28.2.2002 & 5.4.02 and before the date of hearing on 5.4.2002 applicant submitted two applications on 3.4.2002 to Revisional Authority/Senior Divisional Commercial Manager wherein in one application he demanded the change of enquiry officer & in another application he reiterated the demand of documents. On 4.2.2002 during enquiry proceeding no business has been carried out except filing of an application by applicant containing list of document demanded by him & on 28.2.2002 discussions have been made relating to documents. The ground of change of enquiry officer is that he is having negative attitude towards applicant & he is harsh on caste line & this is evident from the proceeding dated 28.2.2002. He has further alleged that enquiry officer is troubling him by saying that documents are secret & he is overlooking the directions of Railway Board in the matter of enquiry hence, enquiry may be stayed & enquiry officer replaced. The main objection of the applicant is that the enquiry officer is from general category who is not impartial & his activities are against the interest of applicant. From the above circumstance it is evident that the enquiry officer has worked effectively in the enquiry proceeding in presence of applicant only on 28.8.2002 & 5.4.02 & only on the basis of two day's working applicant has formed an adverse opinion against him. About the choice & suitability of enquiry officer in the present case applicant has expressed his desire in para 5 & 6 of his representation dated 6.5.2004 which reads as under:—

“5. जाँच अधिकारी श्री एस. पी. दीक्षित ने जातिगत भेदभाव एवं पूर्वाग्रह ग्रसित होकर मेरे विरुद्ध असत्य जाँच रिपोर्ट पढ़ी है जो कि पूर्णतया असंवैधानिक एवं अनियमित एवं अवैध है। क्योंकि मैं एक गरीब तथा अनुसूचित जनजाति का चतुर्थ श्रेणी का रेल कर्मचारी हूँ तथा श्री दीक्षित जो ब्राह्मण होने के कारण मुझसे घृणात्मक भाव रखते थे। अतः उनकी यह जाँच रिपोर्ट निष्पक्ष स्वतंत्र एवं बिना द्वेषभाव के नहीं है तथा खारिज करने योग्य है।

6. आपसे न्याय हित में विनम्र प्रार्थना है कि कृपया उक्त खण्डन योग्य जाँच रिपोर्ट को निरस्त करें तथा पुनः नियमानुसार जाँच किसी निष्पक्ष और ईमानदार अधिकारी जो कि यदि अनुसूचित जाति अथवा अनुसूचित जनजाति का हो, से करवाने की कृपा करें। यहां यह तथ्य उल्लेखनीय है कि जिन अधिकारी श्री रामावतार शर्मा के विरुद्ध मैंने शिकायत की थी वह वर्तमान में उप मुख्य कार्मिक अधिकारी प्रधान कार्यालय, जबलपुर में तैनात हैं तथा अपने पद एवं प्रभाव का भरपूर उपयोग करते हुए जाँच कार्य को प्रभावित कर सकते हैं तथा पूर्व में भी उन्होंने श्री एस. पी. दीक्षित ब्राह्मण होने के कारण अपने पक्ष में प्रभावित किया है। अतः जाँच अधिकारी की नियुक्ति करते समय उक्त बिन्दुओं को भी ध्यान में रखा जाना न्यायहित में आवश्यक है।”

38. The management after considering the application of the applicant for change of enquiry officer has concluded that first enquiry officer has already been replaced on the application of the applicant & applicant is trying to keep the enquiry pending & not co-operating in the enquiry proceeding. The application of the applicant was rejected observing that enquiry has attained the stage where change of enquiry officer will further delay the enquiry & thus there is no need to change the enquiry officer.

39. The Disciplinary authority vide his letter dated 30.4.2003 asked applicant to file his representation against enquiry report within 15 days from date of receipt of enquiry report. The letter dated 30.4.2003 was returned back by Station Manager with endorsement that applicant is absenting since 1.4.2003 & photo copy of letter has been pasted on notice board.

40. The enquiry report dated 31.10.2002 was finally received by applicant on 23.4.2004 & applicant submitted his representation dated 6.5.2004 against enquiry report to the disciplinary authority. The disciplinary authority/Assistant Divisional Commercial Manager-1, Sh. Amardip Singh, considered the representation of the applicant & thereafter passed the order of punishment dated 9.2.2005 for compulsory retirement of the applicant from service.

41. Against the order of punishment of disciplinary authority dated 9.2.2005 applicant presented appeal before Divisional Commercial Manager. The appeal dated 23.2.2005 has been shown to be received on 23.2.2005 in the office of the Divisional Rail Manager. In the report dated 11.11.2005 of DRM's office, Kota it has been indicated that the seal of the office showing receipt of the appeal on 23.2.2005 is not the genuine official seal of the office & sample of true official seal of the office has been shown affixed on report dated 11.11.2015. The appellate authority Sh. Dheeri Singh, Divisional Commercial Manager, Kota passed the order of dismissal of appeal & vide letter dated 16.12.2005 decision of the dismissal of appeal was conveyed to the applicant. After considering the appeal the appellate authority in its order has pointed out that the appellant has submitted the appeal late by nine months without assigning any reason. The order of appeal dated 16.12.2005 reads as under :—

1. कर्मचारी ने अपील 9 माह की देरी से प्रस्तुत की है। जिसका कोई समुचित कारण कर्मचारी ने अपनी अपील में नहीं बताया है।
2. श्री लक्ष्मीनारायण मीना ने अपनी अपील पर 23.2.05 की जाली प्राप्त तिथि की मोहर लगाकर नवम्बर माह में अपनी अपील प्रस्तुत कर प्रशासन को गुमराह करने की कोशिश कर हैं।
3. श्री लक्ष्मीनारायण मीना ने समय पार अपील प्रस्तुत की है, वह भी जाल साजी के तहत। अतः अपील पर विचार नहीं किया जा सकता। उपरोक्त कारणों के तहत अपील अस्वीकृत की जाती है।”

42. It is important to note that in order of appeal dated 16.12.2005 it has been alleged that appeal dated 23.2.2005 has been shown to be presented by the appellant on 23.2.2005 by fraudulent means using forged seal of receipt dated 23.2.2005 whereas the appeal has been presented in the month of November, 2005. Applicant has not alleged anything specifically in his statement of claim or rejoinder against the observation made by appellate authority regarding presenting the appeal late employing fraudulent means. It is also important to note that applicant has sent many reminders addressed to the appellate authority between 23.2.2005 & 23.12.2005 for making disposal of appeal.

43. Reference has been made by learned representative of the applicant to the provision of Article 311 of the Indian Constitution which reads as under :-

“ 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a state – (1) No person who is a member of a civil service of the Union or an all India service or a civil service of a state or holds a civil post under the union or a state shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed :-

- (a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
- (c) where the President or the governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.”

44. In 1969 S.L.R. 479, Mysore High Court, A.K. Narain.....Petitioner v/s. the General Manager, Southern Railway & Others.... Respondent, petitioner was an Assistant Station Master who was removed from his post by an order dated 24.9.63 as a result of punishment imposed on him in a disciplinary proceeding. The charge levelled against him was that he received a passenger train on the main line in contravention of Station working instructions. The other concomitant part of the charge was that there was a failure by him to reckon the distance between the two stopping trains & that there was thus disobedience of para 4(j) of the Accident Rules. The enquiry commenced on July 19, 1963 which was concluded on the next day. The punishment imposed was challenged by the petitioner on many grounds wherein it was held by the Hon'ble High Court that it was not necessary to discuss all the points of complaint made in the writ petition & the writ petition is fit to succeed on a much shorter ground. It was held by Hon'ble High Court in para 2 of the judgement, “.....When the disciplinary enquiry was commenced against the petitioner all that was done by the concerned authority was to communicate to him a charge which was as brief as it could be. That charge was not accompanied by a statement of the allegations on which the charge was based, although under rule 1709 of the Railway Discipline and Appeal Rules regulating the conduct of disciplinary enquiries for railway servants other than those employed in the railway protection force, made it incumbent upon that authority to make available to the petitioner along with the charge that statement of allegations.” The other ground on which the Hon'ble High Court was satisfied to quash the punishment was that on June 27, 1963 petitioner had made a request to concerned authority for copies of proceedings & findings recorded in preliminary enquiry which preceded the disciplinary proceeding & petitioner was informed on June 29, 1963 that those copies could not be supplied. It was held that such refusal vitiated the punishment imposed on petitioner. Accordingly the order of punishment was quashed by Hon'ble High Court & petitioner was ordered to be reinstated to his post with all the benefits & advantages flowing from such reinstatement. Thus, it was violation of rule 1709 of the Railway Discipline & Appeal Rules regulating the conduct of disciplinary enquiries for railway servants other than those employed in R.P.F. & non-supply of copies of proceedings & findings of preliminary enquiry proceeding the disciplinary proceeding was the cause of setting aside the order of punishment. In the case of

Laxminarayan statement of allegations has been supplied along with charge & no document relating to preliminary enquiry is in demand hence, no benefit can be derived from this ruling in favour of applicant.

45. In 1967 S.L.R. 759, S.C. Tirlok Nath.... Petitioner v/s. Union of India & others.... Respondent, appellant Sh. Trilok Nath was Deputy Superintendent of Police in crime branch at the time of occurrence. Certain criminal cases were investigated by Delhi C.I.D. against a woman Doctor Vimla & papers in connection with investigations used to pass between investigating officer & Superintendent of Police through the appellant. The allegation against the appellant was that on March, 4, 1955 appellant went to Dr. Vimla's office in Chandni Chowk & offered to help her & on 11 March, 1955 he told her that she should meet him at Delhi Railway Station at 5 p.m. He further asked her to come alone & she should not come by her car & from Delhi Railway Station he will take her to some place hence, she should inform at her house that she would not return till 9 p.m. This matter was reported by Dr. Vimla immediately to District Magistrate that appellant was making overtures to her on the pretext that he will help her in criminal cases pending against her. Dr. Vimla was asked to telephone the appellant in presence of District Magistrate & S.S.P. She telephoned the appellant & conversation was tapped & recorded. Pursuant to direction of District Magistrate a trap was led for apprehending the appellant & Dr. Vimla at the place where the appellant had proposed to take her. Dr. Vimla went to Railway station according to direction of appellant & was picked up by him in his car. He took her to Shidipura, Karol Bagh & parked the car on the main road. Along with Dr. Vimla he went through a lane in a house situated therein. The car of the appellant was followed by two cars, one of them occupied by A.D.M. & the other by S.P. After reaching at the designated place at 8.15p.m. the door was knocked which was opened by appellant. Appellant was asked to allow the search of the house but appellant was not willing to allow the search without a search warrant. A search warrant was prepared & signed by ADM & search was carried out by both the officers. During search Dr. Vimla was found in the house & they noticed that Dr. Vimla & appellant were having drink. Statement of Dr. Vimla was recorded by ADM & in the statement she stated that after taking whisky the appellant made indecent overtures to her and outraged her modesty and because of this she cried out. The appellant was then questioned. He admitted that the house belonged to a friend of his and was in his temporary possession and said that Dr. Vimla was the wife of his friend. This fact was denied by Dr. Vimla. The appellant also said that he had no concern with the cases against Dr. Vimla but that she had been asking him to intercede in her behalf. He also said that one Jaswant Singh, Deputy Superintendent of Police, Gurgaon, had also recommended Dr. Vimla's case to him. He further said that Dr. Vimla had rung him up that day & told him that Jaswant Singh was due to arrive from Gurgaon at 6.30 P.M. and that he should come to the railway station. It was for this reason that he went to the railway station. Jaswant Singh did not however, arrive by that train and Dr. Vimla who was there proposed that they should go to another place in Shidipura where they could meet Jaswant Singh. He, therefore, took her to the house which was close by but did not find Jaswant Singh there. After this, first information report of Dr. Vimla was recorded & appellant was immediately arrested but released on bail. On next day he was suspended.

46. On April 26, 1955 a charge of misconduct was formulated against the appellant by Chief Commissioner & Chief Secretary of the Chief Commissioner was appointed as enquiry officer for holding an enquiry into the charge. The enquiry was ordered under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930. A copy of the order which contained the charge was served on the appellant and he was asked to submit his explanation to the enquiry officer within one month from the date of service. He was also asked to inform the enquiry officer whether he wanted to be heard in person & also whether he would like to produce any witnesses. The ground on which the charge of misconduct was based were also supplied to the appellant. The appellant however, did not file a written statement in answer to the charge & to the allegations contained in the grounds furnished to him. Appellant wanted that unless criminal charge against him is cancelled or withdrawn or proceeded first and afterward departmental enquiry might be held but this demand was turned down by Chief Commissioner & appellant was advised to file his explanation to enquiry officer within prescribed period. Thereafter, appellant by letter dated 23.7.55 complained that he had not been furnished with all relevant material which was required for preparation of written statement. He further raised objection that procedure laid down in public servants (Enquiries) Act, 1850 should be followed. He further added that the criminal charge & departmental proceeding were outcome of a deep rooted conspiracy in which high officials of the Delhi Government were involved & suggested that a Judge from outside Delhi should be appointed to make the enquiry. The enquiry officer informed the appellant that objections raised by him were unwarranted. He further informed him that enquiry was under the Civil Services Classification (Control and Appeal) Rules and the provisions of the public servants (enquiries) Act, 1850 could not be followed. The enquiry officer further informed the appellant that it was open to him to ask for any documents which he wanted to see. The enquiry officer asked the appellant to submit his statement but appellant said that he had no intention of submitting the written statement. The enquiry officer then proceeded ex-parte against the appellant & came to the conclusion that appellant was guilty of charge of misconduct & recommended his removal from his service. The appellant was supplied with copies of enquiry report dated 30.9.55. A notice was sent to appellant by Chief Commissioner stating that he has accepted the finding of the enquiry officer & in consultation with the Union Public Service Commission he has proposed to remove the appellant from police service & asked him to show cause against the action. The appellant submitted his explanation & after considering the explanation of the appellant the Chief Commissioner removed the appellant from the service from 17.12.55.

47. Aggrieved by the decision of Chief Commissioner appellant moved Hon'ble High Court of Punjab under Article 226 of the Constitution for quashing the order of removal of appellant from service which was dismissed in limini. Against the order of Hon'ble High Court an appeal by special leave was filed by appellant before the Hon'ble Supreme Court in which numbers of grounds were raised in support that removal of the appellant was illegal. It was held by Hon'ble Supreme Court that all the grounds are not necessary to be referred except one which is sufficient to quash the order of Chief Commissioner removing the appellant from service & the ground is the violation of principle of natural justice by enquiry officer with the result that appellant was deprived of reasonable opportunity of showing cause against the action proposed to be taken against him which violated rule 55 of the Civil Services (Classification, Control and Appeal) Rules. Rule 55 required that public servant concerned must be afforded adequate opportunity to defend himself. It has been held by Hon'ble Supreme Court in para 9 as under :-

“.....Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the first information report and the statements recorded at the Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the Inquiry. The inquiry held must, in these circumstances, be regarded as one in violation not only of r. 55 but also of Art. 311(2). Accordingly, we quash the order of removal of the appellant from service passed by the Chief Commissioner of Delhi.”

48. Looking into fact & circumstances of the case of Laxminarayan it is clear that no help can be derived from the case of Trilok Nath in favour of applicant because in case of Tirlok Nath there was violation of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules wherein it was obligatory upon the enquiry officer to furnish the public servant concerned with copy of charges levelled against him the ground of which these charges were based & the circumstances on which it was proposed to take action against him & further as per the requirement of the public servant he was to be furnished with copy of all relevant documents required for his defence. The appellant was not supplied with copy of F.I.R. & statement recorded at Sidhipura House along with other statements recorded during investigation which prejudiced the appellant whereas in case of Sh. Laxminarayan he was already furnished with all the documents of the charge sheet & statement of imputations on which charges were based. Beside this he was provided with document no connected with charge & he was provided with facility to inspect & note the extract where copy was not provided.

49. In AIR 1986 S.C. 2118, Kashinath DikshitaAppellant V/s. Union of India & others Respondent, appellant was holding the post of Superintendent of Police, Bijnor (U.P.) at the time of occurrence. He was dismissed on 11.6.69 on the basis of departmental enquiry. The writ petition by appellant against the order of dismissal was dismissed by Hon'ble Allahabad High Court. Appellant preferred appeal before Hon'ble Supreme Court against order of dismissal of writ by Hon'ble Allahabad High Court which was allowed & decision of the Hon'ble Allahabad High Court was reversed by Hon'ble Supreme Court.

50. During enquiry appellant had requested for supply of copies of all the statements made by the witnesses during preliminary enquiry & copies of the documents on which reliance was placed in support of the charges levelled against the appellant which was turned down by the disciplinary authority. The disciplinary authority granted permission to the appellant to inspect the copies of the statements & the documents in question if he so desired. The request of the appellant to be accompanied with stenographer for inspection was also turned down by the disciplinary authority & appellant was told that he himself could make such notes as he desired on the basis of inspection made by him. Copies of the statements of witnesses & copies of the documents were not supplied to the appellant till the conclusion of departmental proceeding. It was held by Hon'ble Supreme Court that where the government refused to its employee who was dismissed, the copies of the statements of witnesses examined at the stage of preliminary inquiry preceding the commencement of the inquiry and copies of the documents said to have been relied upon by the disciplinary authority in order to establish the charges against the employee and even in this connection the reasonable request of the employee to have the relevant portions of the documents extracted with the help of his stenographer was refused and he was told to himself make such notes as he could, and the Govt. failed to show that no prejudice was occasioned to the employee on account of non-supply of copies of documents, the order of dismissal rendered by the disciplinary authority against the employee was violative of Ar. 311(2) in as much as the employee has been denied reasonable opportunity of defending himself. It is pertinent to mention that documents not given to appellant in Kashinath Dixita case are the documents which are the basis of charge whereas in the present case relating to Laxminarayan all the documents relating to charge have been given to the applicant in certified form & copies of the certain documents not related to charge have also been given to the applicant & documents whose copies have not been given have been made available to the applicant for inspection. Thus, the case of Sh. Kashinath Dixita is distinguishable on the above points.

51. It is important to note that from the day to day proceeding of the enquiry against the applicant as mentioned above it is clearly evident that the applicant has alleged more than once that he is a class IV employee & unable to understand the English language hence, it was most necessary that he must have first nominated his defence representative for which he was requested on many occasion by various officers of the department including enquiry officer but he never acted on the advice of any officer & was deliberately reluctant to nominate anyone. All the documents connected with charge have been supplied to him & receipt relating to them is available on record. Against

the demand of documents not connected with charge certain documents have already been supplied to him & remaining have been made available for inspection & noting of extracts as desired. No where it has been mentioned by applicant that what is the relevancy of document demanded by him not connected with charge sheet & how the documents are going to form the defence & it's refusal to give is likely to cause prejudice to the applicant although there has been no denial of any document to the applicant & he has been only asked to approach the enquiry officer for documents which are not the part of charge. From the proceeding of 28.2.2002 it is evident that function of demand & supply of the documents was over & next proceeding of regular hearing was to take place on 5.4.2002 which was date fixed on desire of the applicant.

52. In 1997 II LLJ Page 388 (Supreme Court), Secretary to Govt. & others V/s. A.C.J. Britto, during enquiry the respondent had asked for copy of certain documents & had also requested the enquiry officer to peruse the file in C No.A1/861/1981 of D.I.G.. Respondent was denied the documents demanded by him. The tribunal held as a result of refusal the respondent was deprived of reasonable opportunity for defending himself. It was held by the Hon'ble Supreme Court that the tribunal without considering how those documents were relevant upheld the contention of respondent that by not supplying copies of those documents he was denied reasonable opportunity to defend himself. It has been further held that mere non furnishing of copies of documents would not vitiate departmental action & administrative tribunal has to find out how documents are relevant & how respondent was prejudiced in defending himself as a result of failure to supply copies of documents.

53. From the above fact & circumstances I am of the view that there is no failure on the part of opposite party in providing copy of the documents required by applicant to defend himself in enquiry. It is important to note that the documents relating to examination & incorporation of name of Girishchand in the panel of successful candidates were irrelevant for the purpose of forming defence in favour of applicant because they were well scrutinised by Hon'ble CAT & there was nothing in those documents to support the case of the applicant for purpose of his selection to the post of T.C. From the perusal of entire enquiry proceeding & sequence of events relating to providing of copy of documents to the applicant relating to charge sheet or other additional documents I am of the view that there is no failure of natural justice because it cannot be said that applicant had not been able to defend himself for want of any document & any prejudice has occasioned to the applicant.

54. Further it has been argued by learned representative of the applicant that appointment of the applicant was made by Senior Divisional Engineer & Senior Divisional Electrical Engineer, Kota vide letter No. E/E/891/2/3 dated 24.2.82 (Annex-2) hence, Assistant Commercial Manager (ACM) is not the competent authority to issue the charge sheet because if ACM would have been competent to appoint the applicant then Senior Divisional Engineer/ Senior Divisional Electrical Engineer would not have been nominated to appoint the applicant hence, ACM is not competent authority to pass the order of punishment against the applicant. It has been further argued that opposite party has not filed any such document to show that ACM is competent to pass the order of punishment. Reliance has been placed on the case reported in AIR 1972 S.C. 2452, The Management of D.T.U.Petitioner v/s. Sh. B.B.L. Hajelay and another Respondent, AIR 1979 S.C. 1912, Krishna Kumar..... Appellant v/s. the Divisional Assistant Electrical Engineer and others Respondent & AIR 1977 SC 747 Mysoor State Transport Corporation v/s. Mirja Kasim Ali. Countering the above argument it has been argued by learned representative of the opposite party that ACM is competent authority to issue the charge sheet & order of compulsory retirement of the applicant has been passed by Additional Divisional Commercial Manager (ADCM) who is competent authority to pass the order of punishment hence, no legal wrong has been committed in issuing of charge sheet & passing the order of punishment. It has been further argued that Annex-2 is not the appointment letter of the applicant which is alleged to be appointment letter by him. It has been further alleged about Annex-2 that it is the list of successful selected candidates for posting as class IV employee. It is pertinent to mention here that both the side have failed to file on record the schedule of power wherein it can be seen that who are the authorities competent to pass the order of dismissal, compulsory retirement or reduction in rank. The parties have also failed to file the list of hierarchy of commercial department & Electrical Engineering Department & information relating to equivalent ranks of both the departments. Any of the above mentioned three punishment may be awarded only by appointing authority or authority equivalent to appointing authority or authority above the rank of appointing authority. Appointing authority means not only the authority who is having power to appoint but it includes that authority also which really makes the appointment. If an authority making the appointment is superior in rank to the authority competent to make appointment then such superior authority will be the appointing authority for an employee & this difference in rank will be relevant for the purpose of awarding punishment i.e. such superior authority only will be the disciplinary authority for the purpose of passing the order of punishment as a appointing authority. It has been held in AIR 1977, Supreme Court 747, Mysor State Transport Corporation V/s. Mirza Kasim Ali, that departure from above rule in passing the order of punishment will render the punishment illegal which cannot be cured by an order in appeal or revision.

55. In AIR 1972 S.C. 2452, The Management of D.T.U.Petitioner v/s. Sh. B.B.L. Hajelay and another Respondent, it has been held by Hon'ble Supreme Court in para 13 of the judgement as under :-

“.....We are not concerned here with the law of agency. It is implicit in the statutory prohibition debarring removal by a lesser authority, that the appointing authority has to personally apply its mind to the

question of removal and cannot delegate such a function. Since the authority which can remove an employee is the appointing authority or its superior in office, the protection thus provided cannot be destroyed by importing concepts of agency.”

56. In AIR 1979 S.C. 1912, Krishna Kumar..... Appellant v/s. the Divisional Assistant Electrical Engineer and others Respondent, the appellant was appointed as Train Lighting Inspector under an order issued by the Chief Electrical Engineer & was removed from service under an order passed by the Divisional Assistant Engineer, Central Railway, Nagpur. It was held by Hon'ble Supreme Court that since the appellant had been removed from service by an order passed by the authority who, at any rate, was subordinate in rank to the Chief Electrical Engineer on the date of appellant's appointment the order of removal was in patent violation of the provisions of Art. 311(1) of the Constitution. Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Ar. 311(1) becomes available. The subsequent authorization made in favour of the authority passing the order of removal in regard to making appointments to the post held by the appellant cannot confer upon him the power to remove him. Besides, delegation of the power to make a particular appointment does not enhance or improve the hierarchical status of the delegate. An officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another. The Divisional Engineer did not cease to be subordinate in rank to the Chief Electrical Engineer merely because the latter's power to make appointments to certain posts had been delegated to him.”

57. From the citations mentioned above it is clear that a person cannot be dismissed, discharged or removed by an authority subordinate to the appointing authority on the date of appointment. Now, It is important to settle the issue whether Annex-2 is an appointment letter. From perusal of Annex-2 it appears that the document is a notification of result of selection held on 30.12.81 under crash programme to wipe out the deficiency of ST candidates & the list has been prepared in order of seniority. It has been notified on 6.7.81 & says that successful candidates will be appointed against vacancies after verification of their character & antecedents & after passing the requisite medical examination. The authority who has made the selection is Sr. DEE/ SR. DEN (E), Kota. Same authority has issued the letters to the candidates calling them for interview. This clearly indicates that candidates shown in the selected list are to be issued with appointment letters only after clearance of medical examination & verification of their character & antecedents. Rank & place of posting has not been mentioned as to for which post they have been selected for recruitment. This fact of non mentioning of rank & place of posting further goes to show that they were to be issued with an appointment letter with designated rank & place of posting after medical examination & verification. An appointment letter always contains name, rank, pay scale, place of posting & date of joining beside other conditions of appointment which are absent in Annex-2. Thus, I am of the view that Annex-2 is not a document fit & reliable to make assessment of the rank of appointing authority & treat it as appointment letter. Annex-2 is selection list prepared by examining/interviewing body. From perusal of enquiry record also it appears that the issue of appointing authority of Sh. Laxminarayan Meena for the purpose of this enquiry has been taken up & discussed & it has been reported on 1.12.04 that he is a group D employee whose appointing authority is Assistant Commercial Manager (ACM). From above fact & circumstances, I am of the view that ACM is the appointing authority for the applicant & order of punishment passed by disciplinary authority is not illegal & accordingly charge sheet issued by ACM is also issued by authority competent to issue the charge sheet. Here, it is pertinent to mention that nothing has been pointed out by applicant side that what prejudice the applicant has suffered by charge sheet issued by ACM-1. In the above fact & circumstances & on the basis of discussions made above I am of the view that applicant has failed to make out a case that disciplinary authority is not competent to award the punishment of compulsory retirement or the authority issuing the charge sheet is not competent in law to issue it.

58. Further it has been argued by learned representative of the applicant that an application dated 3.4.02 (Annex-26) was moved by applicant for change of enquiry officer Sh. S.P. Dixit to the effect that applicant does not expect justice from him because he has not given desired document demanded by applicant & behaviour of the enquiry officer was discriminatory on caste basis & he did not behave with applicant properly but enquiry officer was not changed hence, enquiry report is not fair & punishment awarded on the basis of such enquiry report is liable to be quashed. Countering the above argument, it has been argued by the learned representative of the opposite party that matter of change of enquiry officer was considered & management did not find it proper to change the enquiry officer. It has also been argued that by asking the replacement of Sh. S.P.Dixit applicant had intended only to linger the proceeding & replacement of Sh. S.P.Dixit would have made no difference except an opportunity further to make a third application for change of enquiry officer to linger the enquiry. From perusal of enquiry record it appears that an application dated 3.4.2002 has been addressed to Review Officer/Senior Divisional Commercial Manager (SDCM) with allegation of bias against the enquiry officer that enquiry officer is troubling him by not supplying the documents alleging the documents to be secret. It has also been alleged that Sh. S.P. Dixit is a retired officer who bypasses the directions of Railway Board, hence, enquiry officer be removed by appointing an impartial enquiry officer. From enquiry record it appears that prior to Sh. S.P. Dixit, Sh. K. Gopinathan was the enquiry officer appointed vide order No. E/161/3/5450 dated 12.3.2001 & intimation of appointment was given to applicant vide letter dated 14.3.2001. Applicant vide his letter dated 26.6.2001 addressed to Review Officer/Senior Divisional Commercial Manager (SDCM) demanded the change of enquiry officer, Sh. K. Gopinathan with allegation that enquiry officer is not providing desired documents

by applicant. He further alleged that enquiry be conducted by an Hindi knowing enquiry officer & not an English knowing enquiry officer because the applicant is group 'D' employee. Copy of the letter was also sent to enquiry officer Sh. K. Gopinathan by the applicant. The enquiry officer Sh. K. Gopinathan wrote to Disciplinary authority/ Assistant Commercial Manager-1, Kota vide letter No. EO (HQ)/10/2001 dated 3.7.2001 that Sh. L. N. Meena, the applicant has desired that enquiry need not be conducted through him & he has cited certain reasons. Sh. K. Gopinathan was replaced by Sh. S.P. Dixit in view of above application of the applicant. When representation/complaint of the applicant was considered for change of Sh. S.P. Dixit it was held that earlier the enquiry officer has been changed once, hence, there is no need to change the enquiry officer at the stage to which the enquiry has already reached because that will cause further delay in conduct of enquiry. The application of the applicant was rejected on 3.5.2002. While making decision on the applicant's application it has been observed by the management on 23.4.2002 that applicant is trying to linger the enquiry proceeding by none cooperation. Here it is pertinent to note that applicant in his representation dated 6.5.04 addressed to disciplinary authority has stated in para 6 that enquiry report be quashed & enquiry be conducted through an officer of integrity belonging to Scheduled Caste/Scheduled Tribe. The main grievance alleged by the applicant against Sh. S. P. Dixit is that he belongs to general category, hence, he has not been impartial & his actions has been prejudicial to the interest of the applicant. It shall appear from the entire enquiry proceeding that Sh. S. P. Dixit has worked in presence of the applicant only on 4.2.2002, 28.2.2002 & 5.4.2002 wherein on 4.2.2002 applicant has only submitted list of documents desired by him to enquiry officer & on 28.2.2002 applicant has discussed about the documents and there possible availability. On 5.4.02 regular hearing was to take place but on 5.4.02 also matter relating to copy of the documents has been dealt. Thus, applicant has worked effectively only on two days with enquiry officer on 28.2.2002 & 5.4.2002. Applicant has not mentioned any dissatisfaction against the conduct of enquiry officer during proceeding or immediately thereafter except the fact that he can't read the documents which are in English language. If there was anything wrong with conduct of Sh. S.P. Dixit then applicant must have made application on 28.2.02 or 5.4.02 itself but instead of doing that he himself got the next date fixed on 5.4.02 & just two days prior to hearing on 5.4.02 he moved application on 3.4.02 for change of enquiry officer. This application appears to be an outcome of afterthought & step further towards delaying the enquiry proceeding. In fact & circumstances as stated above I am of the view that management by not changing the enquiry officer has committed no wrong which is prejudicial to the interest of applicant. Accordingly, I am of the view that demand of change of enquiry officer by the applicant was not proper & department has committed no wrong in not changing the enquiry officer.

59. Further, it has been argued by learned representative of the applicant that recording of statement of witnesses in absence of charged employee is against the principle of natural justice. Reliance has been placed on the cases reported in AIR 1957 S.C. 882 Union of IndiaAppellant V/s. T.R. Verma Respondent, AIR 1954 ALL 438, Laltr Prasad.....Appellant V/s. Inspector general of Police and others Respondent, AIR 1958 S.C. 300, Khemchand.....Appellant V/s. Union of India & others Respondents & AIR 1961 S.C. 1623 state of Madhya PradeshAppellant V/s. Chairman Sadashiva Waishampayan Respondents. Against above argument it has been argued by learned representative of the opposite party that cases cited by applicant are not applicable in the case of applicant because due to deliberate absence & non-cooperative attitude of the applicant case has proceeded ex-parte against him & only in case of participation by the applicant in enquiry it is possible to record the evidence of a witness in the presence of charged employee.

60. In AIR 1957 S.C. 882 Union of IndiaAppellant V/s. T.R. Verma Respondent, the respondent had participated in the enquiry proceeding & witnesses were examined on 20.4.53 & on the following days & enquiry was concluded on 27.4.53 & on 28.7.53 enquiry report was submitted holding the charges against the respondent found established. On proposed punishment of dismissal respondent alleged that he was not permitted to cross examine the witnesses. It was held by Hon'ble High Court that respondent was denied the opportunity of cross examination & he was not allowed to make his own statement. Respondent was also not allowed to have the examination in chief of his defence witnesses recorded. It was held that these defects amounted to denial of reasonable opportunity to the respondent to show cause against his dismissal.

61. In AIR 1954 ALL 438, Lalta Prasad.....Appellant V/s. Inspector general of Police and others Respondent, the appellant had participated in the enquiry in which he was not allowed to cross examine the witness on the pretext of asking leading question. In this case also in spite of presence of appellant he was not permitted to cross examine all the witnesses. When enquiry started against the appellant he was taken by surprise because he was unaware about enquiry going to commence against him. He was summoned by Superintendent of police & immediately Enquiry commenced against him without sufficient warning. The enquiry was held under section 35 Police Act against a police officer which was enquired by Superintendent of police himself who was not empowered with magisterial power & an enquiry under Police Act could be conducted only by an officer having magisterial power. The preliminary & final both the enquiry were conducted by the Superintendent of police himself. It was held by Hon'ble High Court that appellant had no adequate warning of enquiry which was about to be held against him & he was required to cross examine the witnesses on the basis of summary of their deposition & he was also not allowed to put leading questions. Thus, he was placed in difficult position. Accordingly, it was held by Hon'ble High Court that appellant had no opportunity of a fair hearing & enquiry might have proceeded on assumption that petitioner was guilty. Accordingly writ petition was allowed & order of dismissal from service was quashed. In AIR 1957 S.C. 882 Union of IndiaAppellant V/s. T.R. Verma Respondent & In AIR 1954 ALL 438, Lalta Prasad.....Appellant V/s. Inspector general of Police and

others Respondent, the charged employees, have participated in the entire enquiry & in spite of their effective participation they have not been provided adequate opportunity to cross examine the witnesses & examine their own witness in defence whereas the case of Laxminarayan proceeding has taken place ex-parte due to neglect & non-participation by applicant hence, no benefit can be derived in favour of applicant from this citations.

62. AIR 1961 S.C. 1623 state of Madhya PradeshAppellant V/s. Chairman Sadashiva Waishampayan Respondents, respondent was working on the post of sub-inspector & was posted in the State of Madhya Pradesh & had come from Hyderabad on deputation in Sep, 1948. He was suspended under order dated 3.5.51 of Deputy Inspector General police. The cause of suspension was receipt of complaints against him & enquiry was proposed against the complaints. He was served with charge sheet on 13.5.51 wherein 8 charges were levelled against him. During enquiry six witnesses were examined before the enquiry officer/ Sub-Divisional Officer (Police). Subsequently, under order of Inspector General of Police enquiry was taken over by Superintendent of police himself who framed only five charges against the respondent treating previous charge as unclear. Later charge 4 & 5 were also removed & only three charges were considered against the respondent. During enquiry witnesses were examined & cross examined. During enquiry on 9.11.51 respondent presented application demanding certain documents to be utilised by him in his defence which was allowed in respect of some documents & refused for others. At the end of evidence during enquiry respondent was asked to produce defence evidence on 13.11.51 with warning that enquiry will be closed if defence evidence was not produced by him on 13.11.51. On 13.11.51 respondent again wrote to D.I.G. through Superintendent of police demanding documents not given to him vide his request dated 9.11.51. Respondent wanted to produce these documents in defence before his self examination hence, he wanted to inspect those documents. His application was rejected on 11.11.51 & on 28.11.51 all the three charges were found established by enquiry officer / Superintendent of police. Respondent preferred writ petition under Article 226 before the Hon'ble High Court against the order of dismissal which was allowed. An appeal was preferred by the appellant against the order of Hon'ble High Court which was dismissed by Hon'ble Supreme Court. It was held by Hon'ble High Court that denial of documents demanded by respondent vide his applications dated 9.11.51 & 11.11.51 amounting to violation of principle of natural justice. This view of Hon'ble High Court was confirmed by Hon'ble Supreme Court dismissing the appeal of the appellant. The appellant in this case was denied the documents which were required to be filed in defence before the self examination of the appellant. The matter of supply of document to the applicant Laxminarayan has already been dealt where in it has been held that applicant was not been deprived of any document which resulted into failure of natural justice. From the cited case no help can be taken in favour of applicant in the circumstances of his case.

63. According to Article 311(2), a civil servant cannot be dismissed or reduced in rank until he has been given reasonable opportunity of showing cause against the action proposed to be taken in regard to him. In AIR 1958 S.C. 300, Khemchand.....Appellant V/s. Union of India & others Respondents, the appellant who was in Government service was served with a charge-sheet and an enquiry was held and on the basis of the report of the enquiry officer he was served with an order of dismissal the next day. The appellant challenged the validity of the order of dismissal on the ground that he had not been supplied with a copy of the Enquiry Officer's Report and no opportunity was given to him against the action proposed to be taken in regard to him as required by Article 311. The Court held that even though an enquiry was held on the basis of which the enquiry officer had reported that the charges were proved and recommended the punishment of dismissal the authority competent to pass an order of punishment was bound to give a further opportunity to the Government servant to show cause why the particular punishment of dismissal should not be inflicted on him. It was at this stage where the punishment authority had accepted the report of the enquiry officer and proposed to inflict a particular punishment that the further opportunity became due. Since no further opportunity had been given to the appellant it was held that the order of dismissal was unconstitutional being in violation of Article 311 (2), the Supreme Court held that the 'reasonable opportunity' envisaged by Art. 311 includes :—

- (1) an opportunity to deny his guilt and establish his innocence which can be only done if he is told what the charges against him are and the allegation on which such charges are based;
- (2) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence and also
- (3) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do so if the competent authority, after the enquiry is over and after applying his mind to the gravity of the charges, tentatively proposes, to inflict one of the three major punishments and communicates the same to the Government servant.

This provision was brought in the Constitution by 15th Amendment in 1964 consequent to the Supreme Court judgment in Khem Chand v. Union of India.

64. In Khemchand's case copy of enquiry report was not given to the appellant whereas in the present case copy of the enquiry report has been given to applicant Sh. Laxminarayan & he has made representation against the enquiry report which has been disposed by disciplinary authority before passing the order of punishment. Further, it is to be noted that amendment incorporated in the Constitution consequent to judgement in Khemchand's case has been deleted by Constitution's 42 Amendment Act 1976 hence, second hearing is not required before passing the final order of punishment & owing to 42nd Amendment it is not necessary to give opportunity of hearing at the 2nd stage of the action

proposed to be taken. In above fact & circumstance, no benefit can be derived by the applicant by the Khemchand's case.

65. As far as proving of charge against the Laxminarayan is concerned the charge against the applicant is as mentioned below :-

Annexure-I

Charge sheet for major penalty against Shri Laxmin Narayan Meena, Marker – Parcel Office Kota.

ARTICLE OF CHARGES

Shri Laxmin Narayan Meena, marker- Parcel Office Kota while working as such during the year 199-2000 committed gross misconduct in as much as that.

Shri Laxmin Narayan Meena with a view to get undue benefit and malicious motive lodged a false complaint dated 15.9.99 in Vigilance Office.

Thus, Shri Laxmin Narayan Meena, Marker working parcel Office, Kota by his above act, exhibited lack of absolute integrity to his duty and acted in a manner unbecoming of a Railway Servant, thereby violated Rule 3.1 (1) and (iii) of Railway services Conduct Rules, 1966.

.....

Annexure-II

Statement of imputation support of Article of Charges against Shri Laxmin Narayan Meena, Marker – Kota.

Shri Laxmin Narayan Meena – Marker – Parcel Office, Kota while working as such during the year 1999-2000 committed gross misconduct in as much as that –

Shri Laxmin Narayan Meena, submitted a complaint dated 15.9.99 against the irregularity committed in the selection of T.C. He also confirmed the said complaint vide his statement dated 22.12.99.

In his complaint, Shri Laxmin Narayan Meena, alleged that he was declared passed in the written test conducted in the year 1990 for the post of T.C. However, at the later stage, he was wrongly declared unsuccessful after viva-voce vide memorandum dated 22.2.90.

He alleged that another employees namely Shri Girish Chand was also declared unsuccessful in the viva-voce but later he was unduly favoured by giving promotion as T.C. after a long period of 4 years vide order dated 21.1.1994 with retrospective affect.

He also alleged that he approached to CAT-JP and the Hon'ble CAT-JP vide O.A. No.1099/92 dated 22.8.1994 ordered Railway Administration to give same benefit as given to Shri Girish Chand but the administration is not responding to the CAT's order.

However, during the vigilance investigation none of his allegations found substantiated.

The allegation is that Shri Laxmin Narayan Meena was declared passed in the written test conducted in the year 1990 for the post of TC but however, at the later stage, he was wrongly declared unsuccessful after *viva-voce vide* memorandum dated 22.2.90. The investigation revealed that Shri Laxmin Narayan Meena had secured less than the minimum passing marks as on average of written test and *viva-voce*, hence, the allegation that he was wrongly declared unsuccessful is found totally baseless.

The allegation that Shri Girish Chand was also declared unsuccessful in the *viva-voce*, but later, he was undue favoured by giving promotion as TC after a long period of 4 years vide order dated 21.1.94 with retrospective effect. The investigation revealed that Shri Girish Chand was empanelled as per order of Railway Board in a CBI case of wrong selection of ST candidate. This Interpol action was done with the approval of competent Authority. Hence the allegation of favouritism to Shri Girish Chand by Administration is also found untrue.

The allegation that the Hon'ble CAT-JP vide O.A. No.1099/92 dated 22.8.1994 ordered Railway Administration to give same benefit as given to Shri Girish Chand but the administration is not responding to the CAT's order. The investigation revealed that the matter is still pending in the CAT-JP for final judgment. Hence, the allegation that Administration is not responding to the CAT's order is found baseless and superfluous.

Shri Meena has distorted the facts in his complaint with a view to malign the officer and achieve his motive. This shows his lack of integrity.

This act of making a false allegation is unbecoming of a Railway Servant.

Thus, Shri Laxmin Narayan Meena, Marker working in Parcel Office, Kota by his above act, exhibited lack of absolute integrity to his duty and acted in a manner unbecoming of a Railway Servant, thereby violated rule no. Rule 3.1(1) and (iii) of Railway Services Conduct Rules, 1966.

66. Remaining portion of contains list of document & witnesses in support of charge.

67. Sh. S. N. Salim, Chief Vigilance Inspector in statement before the enquiry officer has admitted that statement of Sh. Laxminarayan was recorded on 22.12.99 before him during investigation of the complaint dated 15.9.99. He has also admitted that complaint dated 15.9.99 was sent by Sh. Laxminarayan Meena & investigation relating to this complaint was assigned to the witness. The witness has testified the content of the complaint & has alleged that complaint was found to be based on untruth & applicant utilised the vigilance department to secure unauthorised gain. He has further deposed that during vigilance enquiry it was found that Sh. Laxminarayan Meena had secured only 45% mark which was less than minimum prescribed mark for passing hence, he was declared unsuccessful. He has further deposed that in the matter of Sh. Girishchand also C.B.I. enquiry was conducted & he was promoted after four year on the basis of order of Railway Board & he was considered for promotion because he was a ST candidate. He has further deposed that Sh. Girishchand was declared successful after four year because during C.B.I. enquiry it was found that Sh. Girishchand was declared unsuccessful on wrong basis & after its correction his name was included on the panel of successful candidates. From the above evidence it is clear that complaint dated 15.9.99 was made by applicant Sh. Laxminarayan which was based on wrong facts. It is also pertinent to mention that during contempt proceeding entire record of examination was scrutinized by Hon'ble CAT & no wrong was discovered in process of including the name of Sh. Girishchand in the panel of successful candidates & no basis was discovered to declare the applicant successful. Accordingly, contempt proceeding was dropped. Thus, the only defence of the applicant relating to case of Sh. Girishchand did not make a case in favour of applicant. From above discussion, it is evident that charge against the applicant was rightly proved.

68. On the basis of entire discussion as made above I am of the view that applicant had no proper reason for non-participation in enquiry proceeding & has not been deprived on account of non-supply of any document which was reasonably required for preparing the defence. Applicant has raised points in written argument that through his supervisor he should have been given information about date & time of appearance in enquiry, in this context it is worth mentioning that entire information of enquiry proceedings have been routed through Station Manager, Kota & they have been received & acknowledged by the applicant through Station Manager, Kota. On some occasions applicant has been found absent from duty from long time when information has returned back with intimation that applicant had been absenting without information since dates mentioned therein. In that event record of enquiry proceedings & information about next date of conduct of enquiry have been routed to the applicant through registered post & through the Station Manager, Kota also. Applicant has taken plea of his sickness & sudden death of his brother in accident, in this connection it is important to mention that enquiry has never proceeded in rapid & neglecting manner. Whenever applicant was sick or there was difficulty in appearance it was always open to him to write to enquiry officer / his Head of the Department or disciplinary authority with medical certificate that the applicant is sick & shall resume duty after fitness. No such information has ever been communicated during enquiry & instead on number of occasions Station Manager has returned the process to be delivered to applicant with noting that applicant is absenting without information since date mentioned in the communication. Hence, I am of the view that matter of absence during enquiry proceeding on valid absence must have been raised at appropriate stage of proceeding before the enquiry officer/disciplinary authority.

69. In Written argument it has been alleged in para 3 that charge memo is fit to be rejected because it did not carry the stamp & name of the rank of disciplinary authority, it is important to mention that this technical ground is not sustainable in view of the fact that purpose of charge memo is only to communicate to the applicant in brief the allegation against him & the basis on which the charge will be proved. It is also important to note that no prejudice has been shown by applicant on account of charge memo not having seal of the name of the rank of disciplinary authority. In para 7 of written argument it has been mentioned that opposite party has not filed the record along with index hence, punishment awarded is liable to be quashed. In this context, it is necessary to mention that at the time of receiving copy of enquiry record it was imperative on the part of applicant to receive the enquiry record according to index which has not been done & applicant cannot derive benefit from his own wrong.

70. As far as provision of Rule 191 of Railway Act, 1989 is concerned this relates to proof of entries in records & documents of railway departments which reads as under :-

“ Entries made in the records or other documents of a railway administration shall be admitted in evidence in all proceedings by or against the railway administration, and all such entries may be proved either by the production of the records or other documents of the railway administration containing such entries or by the production of a copy of the entries certified by the officer having custody of the records or other documents under his signature and stating that it is a true copy of the original entries are contained in the records or other documents of the railway administration in his possession.” According to above provision certified copies of the entries of railway records kept during course of business are admissible in evidence in proceedings by or against the railway. The original records may be summoned wherever necessary.

71. In order dated 21.1.2016 on fairness of enquiry certain observations have been made by tribunal regarding interpolation of documents. In written argument attempts have been made to explain the observations but I do not find it legal, proper & desirable to make any comment on such explanation because the cases of interpolation of documents on record of the file are more than the number of documents on which observation has been made in order dated 21.1.2016 & any further comment appears to be unwarranted.

72. It has been argued by the learned representative of the applicant that punishment awarded to the applicant is disproportionate to the gravity of guilt. Against this, it has been argued by learned representative of the opposite party that quantum of punishment is proportionate & most appropriate to the gravity of the charge & needs no interference. It has been further argued that the Hon'ble Tribunal has very limited scope to interfere in the punishment awarded by the management. The charge against the applicant is that he committed gross misconduct by lodging a false complaint with malicious motive against officers of the department to get undue benefit & thereby he exhibited lack of absolute integrity to his duty & acted in a manner unbecoming of a railway servant. The charge against the applicant has been proved. In 2004 (1) LLN 391, High Court, Patna, D.S.Prasad v/s Union of India & others, petitioner, a head Constable in Central Industrial Security Force was retired compulsorily from the service for assaulting another Constable. It has been held by Hon'ble High Court that when a member of the force assaults another member of the force, punishment of compulsory retirement, which does not deprive from the pensionary benefit is not shocking to the conscience of the court & as such no such interference is required.

73. In 2003 II LLJ page 181, Chairman & Managing Director, United Commercial Bank,Appellant v/s. P.C.Kakkarrespondent, it has been held in para 11 as under:-

“11. To put differently (sic) unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to certain litigations it may, in exceptional and rare cases impose, appropriate punishment by recording cogent reasons in support thereof. In normal course if the punishment imposed is shockingly, disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.”

74. In the fact & circumstances of the present case & on the basis of above discussion I am of the view that punishment awarded by disciplinary authority needs no interference which appears to be proper & proportionate to the nature of guilt.

75. For the foregoing reasons, the action of the management of Central Railway, Kota through DRM, Kota in awarding punishment of compulsory retirement to Sh. Laxminarayan Meena, Marker vide their order dated 9.2.2005 is legal & justified & resultantly, the workman is not entitled to any relief. The reference under adjudication is answered accordingly.

76. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 5 जुलाई, 2017

का.आ. 1632.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रत्नाकर बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोल्हापुर के पंचाट (संदर्भ संख्या 06/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.07.2017 को प्राप्त हुआ था।

[सं. एल-12012/51/2009-आई.आर. (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th July, 2017

S.O. 1632.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolhapur as shown in Annexure, in the industrial dispute between the management of Ratnakar Bank Ltd. and their workman, received by the Central Government on 05.07.2017.

[No. L-12012/51/2009-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE
IN THE INDUSTRIAL TRIBUNAL NO. 2, MAHARASHTRA AT
KOLHAPUR
REFERENCE (IT) NO. 6 OF 2009

Between :

The Asstt. General Manager,
 Ratnakar Bank Ltd.
 Mahaveer, 179, 'E' Ward,
 Shri Shahu Market Yard,
 Kolhapur 416 005.

..First Party

And

Ravindra Shripati Shinde
 Shivaji Nagar, Hupari,
 Tal. : Hatkanangale, Dist. : Kolhapur. - 416 203

..Second Party

Coram : Shri D.V. Thakare, Member, Industrial Tribunal

Appearances : Mr. D.D. Dhanawade, Advocate for First Party

Mr. J.B. Deshmukh, Advocate for Second Party

AWARD(Delivered on 20th June 2016)

This is a reference made by the Desk Officer, Government of India, Ministry of Labour, New Delhi vide its Order No. L-12012/51/2009-IR(B-I) dt.7/12/2009 in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, and the Central Government referred the said dispute for adjudication to this Tribunal in respect of the matters specified in the Schedule to the reference order.

SCHEDULE

Whether the action of the management of Ratnakar Bank Limited in imposing the penalty of termination from services w.e.f.27/07/2006 on Shri Ravindra Shripati Shinde is justified ? If not, what relief he is entitled to and and from which date ?

2. According to second party workman, he has challenged his termination and also challenged fairness of enquiry and findings of enquiry officer. After conclusion of enquiry the second party workman received the findings of enquiry officer. He is dismissed by first party vide dismissal order dt.27/07/2006 and second party approached the learned Labour Court vide Comp.(ULP) No.150/2006. For want of jurisdiction the complaint is dismissed on 24/04/2008. Thereafter the second party raised dispute and finally the dispute referred by Central Government for adjudication to this Tribunal. The second party workman was working with first party since 1981 as 'peon' in Hupari branch with unblemished service record. He worked sincerely and honestly. No single memo was issued to him but he was issued charge sheet alleging and putting charges that deliberately causing damage to the property of the bank as well as consumers of bank and doing any act prejudicial to the interest of the bank. He was issued charge sheet on 17/12/2005. Prior to that he is suspended pending enquiry on 10/12/2005. It is alleged that 24 cheques of Rs.2,99,500/- were deposited by daily newspaper 'Pudhari' in the United Western Bank, Shivaji Chowk branch which sent by courier to Hupari branch for clearance from current A/c No.312 with more cheque.

3. The said amount was in the name of 'M/s. Rajendra News Paper Agency'. Inadvertently those cheques are put in bank drawer for the period of 5 months. The said customer had sufficient bank balance in its account. The second party did not put these cheques intentionally and deliberately to commit any kind of fraud or to prejudice the interest of first party. The second party put these 25 cheques from 15/5/2005 to 31/10/2005 inadvertently and when on 9/12/2005 the first party employer asked about the cheques immediately he came to know that some cheques have not deposited by him for clearance. He searched same and handed over these cheques immediately to first party on the same day and submitted written apology. No loss or damage caused to the property of first party and to the customers. Only inconvenience is caused.

4. The enquiry conducted against him after violation of principles of natural justice and with undue haste, he was not given proper opportunity to defend himself. The entire enquiry was conducted within a span of 5½ hours on 19/01/2006. The second party did not accept the charges before enquiry officer. No alleged charges proved against him. The enquiry officer acted as management representative other than independent enquiry officer. The bank submitted written argument on 31/1/2006 to the enquiry officer and second party submitted his written argument on 6/2/2006 and again apologized in writing. The first party did not consider his clean service record. Enquiry report was submitted on

6/3/2006. The findings are based on such enquiry which is conducted in utter violation of principles of natural justice and with undue haste. The report and findings are not based on evidence and findings are not proper. The enquiry report is perverse and bad in law.

5. On 16/03/2006 he submitted written say to the enquiry officer's report which was not considered and final show cause notice issued to second party on 22/3/2006. It was replied on 29/03/2006 and again second party tendered apology in writing but his prayer was not considered before issuing dismissal order which is shockingly disproportionate punishment. Thus this act is not in good faith but in colourable exercise of employer's rights. Without proving charges this punishment is imposed for patently false reasons and the dismissal is malafide. The second party workman is unemployed and was not gainfully employed anywhere. Therefore, second party has prayed that action of first party to dismissal of second party workman from service w.e.f. 27/07/2006 be declared illegal, improper and bad in law and first party be directed to reinstate him with continuity of service and full back wages with consequential benefits.

6. Vide written statement Ex. C-5 first party bank denied all the allegations levelled against it. It is contended that the 'appropriate government' for first party bank is 'Central Government' and not the 'State Government'. Hence this reference is not maintainable. This Tribunal has no jurisdiction to try and entertain the present reference. Hence preliminary issue be framed pertaining to maintainability of present reference. It is contended that the second party did not approach this Tribunal with clean hands. It is contended that Rajendra Shinde bearing Current A/c No.312 at Hupari branch gave 24 cheques worth Rs.2,99,500/- bearing different dates from 15/05/2005 to 31/10/2005 to 'Daily Pudhari'. The cheques were deposited in United Western Bank and same forwarded for clearance to Hupari branch, in fact there was no balance in the said account.

7. It is contended that in order to protect the interest of brother of second party workman he used to collect courier mail from various couriers and retained in his possession 24 cheques with one more cheque of Rs.6000/- unauthorisedly. He retained all these cheques and not debited in the account of his brother and did not send for clearance and on enquiry it was revealed that second party workman handed over 25 cheques to branch manager and tendered apology which shows that second party workman committed grave misconduct. Therefore he was suspended and enquiry was initiated by following due process of law.

8. In the enquiry all material documents were produced and three witnesses were examined. The second party admitted the misconduct and tendered apology. Even then enquiry officer recorded evidence and asked the second party to conduct cross-examination of these witnesses but he declined and enquiry officer submitted his finding on 6/03/2006 which has been served on second party on 13/03/2006, final show cause notice issued to him on 22/03/2006. The second party was terminated vide order dt.27/07/2006. Thus the termination is proper and legal. Ultimately, it is contended that if this Tribunal comes to the conclusion that termination is illegal and unjustified then the first party bank may kindly be granted opportunity to adduce evidence.

9. After complying all the requirements of law and natural justice the services of second party have been terminated. The termination is legal and proper. The misconduct committed by second party is serious. There is no unfair labour practice on the part of first party. The findings are legal and proper. Complete opportunity was given to second party to defend himself in the enquiry. The findings are based on documents and evidence on record. The second party admitted the charges and allegations levelled against him voluntarily and without any pressure. Taking into consideration the length of his service, his past service record and gravity of misconduct the first party found that termination is the only appropriate and proper punishment and terminated his services. This action is in good faith and is not in the colourable exercise of employer's rights or with undue haste. There is no victimisation. Lastly, it is contended that statement of claim be dismissed with costs.

10. In view of the pleadings putforth by parties issues framed by my learned predecessor Mr.K.R. Pethkar vide Ex. O-6 on 12/6/2012 and vide Part-I Award on 20/10/2015 I have decided issue Nos.1 to 3 and it is held that this court has jurisdiction to try and entertain the reference. The enquiry conducted by first party is as per principles of natural justice and findings of enquiry officer are just and proper. Now remaining issue Nos.4 & 5 are being decided and I have noted my findings thereon as under-

Issues	Findings
(iii) Whether the punishment imposed on the second party is proportionate ?	In the negative
(iv) Whether the second party is entitled for the reliefs as prayed for ?	Partly entitled
(v) What Award ?	As per order below

REASONS

11. **Issue Nos.4 & 5 :** To substantiate the claim the second party workman examined himself at Ex. U-9 and closed his evidence vide pursis at Ex.U-10. The first party employer examined its employee Amar Sharad Patil at Ex.C-20 and closed its evidence vide pursis at Ex.C-21.

12. The second party workman deposed on oath and averred all the facts mentioned in the statement of claim. According to him, he is working with first party since 1981 as 'peon' and almost completed 25 years service as peon and during the entire tenure he has not caused any loss to the bank by committing any misconduct. He has unblemished record. He was never issued any memo or notice earlier and it is an admitted fact. He has been terminated w.e.f.27/07/2006 and since that date he is unemployed. The first party has caused his financial death. He is not gainfully employed and has very poor economic condition. The punishment inflicted is disproportionate considering the misconduct. Hence minimum punishment be awarded considering his unblemished service record.

13. The witness for first party deposed that first party has 194 branches in 14 States and one Union Territory. Service conditions of the employees are governed by the agreements executed between management and unions. He has reiterated facts mentioned in the written statement. After conducting enquiry against the second party in view of the charge sheet the first party received enquiry report on 13/03/2006 by the then enquiry officer Rajan M. Patil. It was served on second party vide letter dt.13/03/2006 and his explanation was called. The second party workman has submitted his explanation vide letter dt.16/03/2006. Then final show cause notice was prepared and explanation of the second party was called as to why he should not be dismissed from the services. This letter was issued on 22/3/2006. The second party replied on 29/03/2006. Again admitted the guilt and tendered apology.

14. According to him first party bank is accountable for the actions taken against the employees under various RBI regulations. Due to illegal act of second party workman daily 'Pudhari' had stopped giving the cheques to first party bank and caused financial loss to the bank. Further this incident was also discussed in the clearing house and it affected goodwill and business of the bank and bank is at the verge of loosing an important customer daily 'Pudhari'. Considering the past record, length of service, seriousness of misconduct and its ill effect on the general discipline the first party bank has lost its faith and confidence in the second party workman therefore it came to the conclusion that dismissal is the only just and appropriate punishment which could be awarded and resultantly the second party workman is dismissed w.e.f. 27/7/2006 vide order. According to him, after dismissal the second party is working in the private firm and is earning good salary which is considerably higher than what he was getting from first party.

15. In cross-examination the second party workman admitted that he has no rivalry with the management. Admittedly he was suspended before issuing charge sheet. He has no proof to show that his past service record is clean and unblemished. He admitted that he has not made any efforts to get employment after dismissal. He admitted that after suspension he never turned up to first party to resume his work. He admitted that after dismissal he has not seen Balance Sheet of the first party. He is unaware how much image of first party is affected and maligned due to the incident. He does not know how much loss incurred by the first party as cheques in question were not encashed.

16. The witness for first party in cross-examination stated that he is deposing on the basis of office record. Bipartite agreement is not on record. He admitted that there is no proof to show that how much loss incurred by first party due to misconduct of second party. He is unaware whether account holder of current A/c No.24 made complaint to first party against the functioning of first party bank. According to him the management of daily Pudhari made a written complaint against the services provided by first party but documentary evidence is not placed on record. He does not know whether the work of clearing cheques is handled by clerk only. He does not know whether first party has admitted that the past service record of second party workman is clean and unblemished. He does not know whether second party workman is gainfully employed.

17. The learned advocate Mr.J.B. Deshmukh for second party workman argued that the second party workman worked with the first party bank since last 25 years in different branches since 1981 and he never committed any misconduct or mistake which is mentioned in Ex.C-22 and it is proved that his past service record is unblemished. Therefore inflicting punishment of dismissal is shockingly disproportionate and sort of financial death as a result second party has suffered irreparable loss. His past service record is not at all considered while inflicting the punishment. He is not gainfully employed since the date of termination. There is no evidence to show that he is gainfully employed. He never caused any loss to the property and reputation of first party bank during his entire tenure. He has not caused any loss to the property of first party. He has not involved in any fiscal scam. He has not committed any theft. He was not arrogant. He has not caused loss of single pai to the first party. No such evidence is brought in the enquiry. The bipartite settlement is not placed on record. He has not acted against the interest of first party.

18. He argued that there is no evidence to show that the management of daily 'Pudhari' expressed any grievance against the services provided by first party. The allegations are made only due to vindictive attitude of first party against second party workman. The witness of first party was not present when panchanama was conducted. There is no proof to show that second party retained the cheques in question in his custody. The charges are not proved in the enquiry. The second show cause notice was not issued. It was mandatory. The act of dismissal itself is illegal and against the principles of natural justice. It is argued that if court comes to the conclusion that charges are proved then lesser punishment be inflicted considering his unblemished record. Lastly he argued that first party be directed to reinstate the second party with continuity of service and back wages and other legal dues.

19. According to him, this court has ample power u/s 11(A) of Industrial Disputes Act, 1947 to reduce the punishment imposed by the first party. There is no sufficient evidence to prove the charges against him. Moreover he has tendered apology in writing. There is no evidence to show there is no cause to the first party. More particularly

there is no pleading and evidence of loss of confidence. The punishment is certainly disproportionate. At the most one increment can be withheld which will be a proper punishment considering the misconduct of second party workman. In fact the first party employer could have inflicted lesser punishment considering the nature of his job. There is no substance in the allegation of loss of confidence. Lastly, he argued that the second party has led sufficient evidence to prove his claim. Hence reference be allowed. He is placing reliance on,

- (i) State Bank of Patiala v/s Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court-1, Chandigarh and Anr. (2012 III CLR 979-Hon'ble Punjab & Haryana H.C.)

Ratio : With the insertion of Sec.11-A in the Industrial Disputes Act, 1947, the prerogative of the employer to inflict the punishment of the delinquent workman for misconduct, has been restricted as the industrial adjudication is vested with the power, to substitute lesser punishment in place of dismissal or discharge, on coming to the conclusion that the punishment awarded, is shockingly disproportionate or is not commensurate with the act of misconduct committed by the workman.

- (ii) Employer in relation to the Management of Bank of India, Jamshedpur v/s. Their Workman namely Inderawati Devi (2014 I CLR 258-Hon'ble Jharkhand H.C.)

Ratio : As per the law settled by the Supreme Court, on finding delinquent employee guilty of serious type of misconduct in a disciplinary enquiry, before issuing major penalty of dismissal or discharge from service, issue of 2nd show cause notice to delinquent employee, is absolutely necessary.

- (iii) Suresh Narbham Kachalia v/s Shakti Insulated Wires Ltd. (2005 II CLR 972-Hon'ble Bombay H.C.)

Ratio : What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence, (ii) by abusing such position, he commits acts which results in forfeiting the same, and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on the ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the management. Objective facts which would read to a definite inference of apprehension in the mind of the management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost.

- (iv) Roop Singh Negi v/s. Punjab National Bank and Ors. (2009 I CLR 160-Hon'ble Supreme Court)

Ratio : Purported confession of appellant not proved in the enquiry. No direct or indirect evidence against appellant in support of charges made against him. Report of Disciplinary Authority and Order of Appellate Authority not supported by any reasons. Provisions of Evidence Act, not applicable, but principles of natural justice are applicable to such enquiries. Inferences of enquiry officer are not supported by any evidence. Suspicion against delinquent cannot be a substitute for legal proof. Judgment of High Court set aside.

20. On the contrary, learned advocate Mr. D.D. Dhanawade for first party bank argued that there are no detail particulars of allegations against first party and are not elaborated in the statement of claim. Similarly no such evidence is brought on record. There is no evidence that punishment inflicted is shockingly disproportionate. There is no attempt for getting any other employment on the part of second party. The management after considering the gravity of misconduct imposed the punishment of dismissal for loss of confidence. It is necessary to maintain office discipline. The first party has taken right decision of dismissal of second party workman. Lastly he argued that interference in the administrative order is not warranted by this court. Hence complaint be dismissed.

21. He further argued that the bank witness in Ex.C-20 reiterated all the facts mentioned in the written statement. The witness proved all the documents which are referred in the charge sheet at Ex.C-29 and in dismissal order it is specifically mentioned that bank has lost confidence in the second party workman and he has been dismissed and the dismissal is just, proper and legal. Misconduct brought to the notice of the bank by daily 'Pudhari' on 9/12/2005. The second party admitted the misconduct and tendered apology on 9/12/2005. Panchanama of cheques done on 9/12/2005. He was suspended on 10/12/2005. Charge sheet issued on 17/12/2005. He replied on 25/12/2005. Enquiry initiated on 19/01/2006. Delinquent admitted misconduct vide apology on 19/01/2006. Report of enquiry officer received on 6/03/2006. First show cause notice with enquiry officer report issued on 13/03/2006. First show cause notice received on 16/03/2006. The second show cause notice sent on 22/03/2006. In the explanation given to the second show cause notice the second party admitted misconduct and tendered apology on 29/03/2006 and dismissal order issued with the observation and for loss of confidence on 27/07/2006.

22. The learned advocate further argued that though it is objected that being peon the post has no any confidentiality in fact it is not proved that his past service record is clean. It is settled law that in case of proved misappropriation there is no question of considering the past record and it is a discretion of the employer to consider the same and it is not open for the court to substitute the penalty imposed by the employer because public bodies must be held to strict norms of integrity and behaviour and conduct which is calculated to prejudicially affect the interest of public body.

23. He argued that considering the gravity of the misconduct there is no question of inflicting lesser punishment though his past service record is free from taint. According to him, bipartite settlement is available all over India and even then first party is ready to produce the same. Lastly he argued that since second party has conducted serious misconduct which is duly proved in the enquiry and the bank has lost confidence in him therefore just and proper action is taken. This court has limited jurisdiction to entertain in the quantum of punishment and this case does not deserve any intervention of the court. He is placing reliance on

(i) Hombe Gowda Education Trust and Anr. V/s. State of Karnataka and Ors.

(2006 I CLR 280-Hon'ble Supreme Court)

Ratio : Held that assault on superior at work place was an act of gross indiscipline. Punishment of dismissal, cannot be termed as disproportionate so as to shock one's conscience.

(ii) P.G. Mahajan v/s. The Director, International Airport Authority of India & Anr. (2011 III CLR 325-Hon'ble Bombay H.C.)

Ratio : Petitioner is dismissed from service for misconduct-Submission is that disciplinary authority failed to consider past record of the petitioner and as such the order is vitiated. Submission is rejected in view of serious charge in this case and after relying on the decision of the Supreme Court in the case of Janata Bazar 2000 III CLR 568 wherein the Court was of the view that in a case of proved misappropriation, there is no question of considering past record.

(iii) MD, North East Karnataka Road Transport Corporation v/s. K. Murti [2007(2) SCC (L & S) 358-Hon'ble Supreme Court]

Ratio : A person guilty of breach of trust should be imposed punishment of removal from service. On facts, held the respondent's conduct, while conducting the bus, in not collecting the requisite fare at the designated place from persons who had travelled were in violation of various regulations. Hence order of removal from service was proper.

(iv) Pradip Phukan, s/o Lt. Kiran Phukan, Assam v/s. United India Assurance Co. Ltd.

(2016 I CLR 579-Hon'ble Gauhati H.C.)

Ratio : Delinquent is found to be a habitual absentee for unauthorised absence of 227 days. The loss of confidence of the employer is natural and impugned decision to remove him from service, cannot be said to be unreasonable or harsh decision. The petition is devoid of merit.

(v) V. Ramana v/s. A.P.S.R.T.C. & Ors.

(2005 LLR 1089-Hon'ble Supreme Court)

Ratio : The court should not interfere with the administrative decision of the employer unless it was illogical or suffered from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards.

(vi) Sagar Sadashiv Kasture, Pune v/s. Central Bank of India, Bombay and Ors.

(2011 LLR 17-Hon'ble Bombay H.C.)

Ratio : Removal of a bank employee, not performing his duties with honesty and integrity i.e. when his misconduct falls within the 'residuary class of an unbecoming act on the part of a bank employee' will not be interfered by the High Court.

24. In view of the rival submissions, I subtly perused the entire evidence, documents and material placed on record. The charge of retaining 25 cheques unauthorisedly and not sending the same for clearance therefore causing financial loss and damage to the reputation of first party bank is the charge levelled and proved against the second party workman i.e. peon. The first party has strongly come with the defence that due to the same misconduct the bank has suffered financial loss and harm to its goodwill and reputation and therefore it has inflicted proper punishment of dismissal.

25. No doubt the second party workman has admitted his guilt and tendered apology unconditionally. Interestingly in this matter the first party has raised the defence that due to proved misconduct of second party its image lowered down in the society and amongst in customers and caused financial loss and its prime client daily 'Pudhari' also did not show any confidence in the style of service provided and showed reluctance about it but in this respect no convincing evidence placed on record. The witness of the first party did not utter any single word. No specific instances of loosing confidence are given in the evidence and pleading. There is no whisper in the written statement that bank has lost confidence in second party workman due to his misconduct. Certainly this plea of loosing confidence and thereby inflicting disproportionate punishment is an afterthought attempt to justify the action on the part of first party which is not acceptable. Neither details of financial loss and damage to the reputation quoted in the pleading nor brought in the evidence by the first party. Virtually there is no evidence led by first party. There are no reasonable grounds for loosing confidence in second party workman.

26. It is pertinent to note that second party workman is not facing charge of misappropriation. After receiving charge sheet the second party workman has tendered apology for the misconduct. Again vide letter dt. 6/02/2006 he tendered apology. The enquiry officer did not observe that due to misconduct it is a case of loss of confidence against

the second party workman. Again on 16/03/2006 vide letter he tendered apology. Even final show cause notice dt.22/03/2006 does not disclose that in the past second party workman committed similar misconducts or any misconduct. Even the dismissal order dt. 27/07/2006 does not disclose that he had bad past service record. There are no details about the loss caused due to misconduct of second party workman. The written complaint made by management of daily 'Pudhari' against services provided by first party is not on record. In short, due to misconduct of complainant an amount of Rs. 3,05,500/- was not cleared and utilised for particular period. This is the grievance of first party against the second party. The second party workman was working as peon at the time of incident.

27. Moreover as per standing orders applicable an order in writing putting on record the facts indicating the circumstances under which the employer had lost confidence in the employee was required to be brought on record by first party. Therefore, the ingenuous case of bonafide loss of confidence cannot be accepted for want of sufficient evidence and pleading. Here the past service record of the second party workman is not at all considered while taking this harsh action. No doubt the right of employer to inflict punishment of dismissal is not unfettered provided the punishment must be commensurate with the gravity of the act of misconduct proved against the delinquent.

28. As per settled law punishment is imposed for an alleged misconduct of employee not in order to seek retribution or to give vent to feelings of wrath. In industrial jurisprudence the requirement of acting bonafide permeates the entire process of proceedings hence the action of management must be bonafide and fair. In this matter considering the proved misconduct the punishment is not justified because the misconduct alleged and proved is such as does not warrant the punishment of dismissal.

29. As per settled law after the insertion of Sec.11(A) an industrial adjudicator has not only the jurisdiction to set aside the order of discharge or dismissal of a workman and direct his reinstatement but it has also the discretion to mold the relief including the award of lesser punishment in lieu of discharge or dismissal as may be warranted by the circumstances of the case. Here though the first party employer took plea that it has lost confidence in the second party workman it cannot ordinarily be exaggerated. As per settled law loss of confidence cannot merely be subjective based upon the statement of the management. Objective facts which would induce a reasonable apprehension in the mind of management regarding the trustworthiness of the employee must be alleged and proved and therefore, it is necessary to carefully examine all the circumstances of the case before coming to the conclusion that the apprehensions of the employer are genuine and he truly feels that it would be hazardous or prejudicial to the intention of industry to retain the workman. Loss of confidence in the integrity of an employee should be substantiated by cogent evidence. If the Tribunal comes to the conclusion that punishment is disproportionate or excessive to the act of misconduct committed by second party, it has power to vary the punishment and imposed lesser punishment which it may deem just and fair in the circumstances of the case. So considering the facts, propositions, circumstances and evidence on record, it is clear that though the misconduct is proved against the second party workman in the enquiry but the gravity of the said misconduct was not so serious that the management is compelled to loose confidence in him and thereby terminated him from the employment. Therefore considering the misconduct the punishment imposed certainly shocks the conscious of the court.

30. It is settled law even if victimisation or unfair labour practice is proved it is open to Tribunal to award lesser punishment in lieu of dismissal if it is satisfied that the dismissal is not justified. Here considering the facts on record I think that a lesser penalty than dismissal would be necessary and just. Certainly the punishment of dismissal inflicted on the second party is grossly disproportionate and shocks the conscious of the court and needs to be interfered and reduced.

31. Considering the nature of duties of the second party workman and duties assigned to him here first party misread the material evidence which does not disclose that it is a case of loss of confidence in view of the misconduct committed by the second party workman. The plea of loss of confidence must have some rational relation to the fact that the employee had misused his position of trust and rendered it undesirable to retain him in service. Loss of confidence in the integrity of an employee should be substantiated by cogent evidence. While taking plea of loss of confidence the first party employer has not considered his clean past service record. He served the first party employer for years together. Therefore, such clean record for a long duration will alone indicate attitude and conduct of second party workman.

32. Therefore, in view of the above said facts and circumstances on record, the order of dismissal needs to be interfered and set aside as it is unwarranted. Here the second party workman has not made any embezzlement, misappropriation of any amount or tampered with the record of bank. It is not proved that due to said misconduct first party employer sustained financial loss or its image maligned in the society. At the most it can be said that this misconduct amounts to negligence in discharging the duties and therefore the punishment imposed is certainly shockingly disproportionate. Considering the misconduct committed by the second party workman it will be suffice to reduce the punishment of dismissal with stoppage of two annual increments with cumulative effect and reinstating him with continuity of service with back wages. Hence I answer issue No.4 in the negative and issue No.5 in the partly entitled and proceed to pass the following award.

AWARD

- (i) The reference is answered in the partly affirmative.
- (ii) The dismissal order passed on 27/07/2006 is hereby quashed and set aside.
- (iii) The punishment of dismissal is substituted with stoppage of two annual increments with cumulative effect.
- (iv) The first party bank is hereby directed to reinstate the second party workman on his original post with continuity of service and back wages with consequential benefits.
- (v) The office is hereby directed that Five copies of this Award be sent to the Desk Officer, Ministry of Labour, Government of India, New Delhi for publication and for necessary action.
- (vi) No order as to costs.

Kolhapur.
Date : 20th June 2016.

D.V. THAKARE Member,
Industrial Tribunal, Kolhapur

Asstt. Registrar,
Industrial Tribunal, Kolhapur.

नई दिल्ली, 6 जुलाई, 2017

का.आ. 1633.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा हिंदुस्तान न्यूज़प्रिंट लिमिटेड, कोट्टायम, केरल के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, अधिसूचना जारी होने की तारीख से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:—

- (1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;
 - (i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अथवा
 - (ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
 - (iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

- (iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:-
- (क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा
- (ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
- (ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
- (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
- (ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।
6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/8/2012-एस.एस.-I]

अजय मलिक, अवर सचिव

New Delhi, the 6th July, 2017

S.O. 1633.—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/establishments of **Hindustan Newsprint Ltd., Kottayam, Kerala** from the operation of the said Act. The exemption shall be effective for a period of one year from the date of issue of notification.

2. The above exemption is subject to the following conditions namely:—

- (1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees';
- (2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;
- (3) The contributions for the exempted period, if already paid, shall not be refundable;
- (4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of:-
 - (i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or

- (ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
- (iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
- (iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:
 - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
 - (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,
 - (e) exercise such other powers as may be prescribed.
- (6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/8/2012-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 6 जुलाई, 2017

का.आ. 1634.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा मिश्र धातु इस्पात संयंत्र, सेल, दुर्गापुर के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, 08 जुलाई, 2017 से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;

- (i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अथवा
 - (ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
 - (iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या
 - (iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:-
 - (क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा
 - (ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
 - (ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
 - (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
 - (ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।
6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/16/2013-एस.एस.-I]

अजय मलिक, अवर सचिव

New Delhi the 6th July, 2017

S.O. 1634.—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/establishments of **Alloy Steel Plant, SAIL, Durgapur** from the operation of the said Act. The exemption shall be effective for a period of one year from 08th July, 2017.

2. The above exemption is subject to the following conditions namely:—

- (1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees’;
- (2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;
- (3) The contributions for the exempted period, if already paid, shall not be refundable;
- (4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees’ State Insurance (General) Regulations, 1950;
- (5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of:-
 - (i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or
 - (ii) Ascertaining whether registers and records were maintained as required by the Employees’ State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:
 - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
 - (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,
 - (e) exercise such other powers as may be prescribed.
- (6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/16/2013-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 6 जुलाई, 2017

का.आ. 1635.— केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा बीईएमएल, लिमिटेड, (सभी कार्यालय) के

कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, अधिसूचना जारी होने की तारीख से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;
 - (i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अथवा
 - (ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
 - (iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या
 - (iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:-
 - (क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है ; अथवा
 - (ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

- (ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
- (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
- (ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।
6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/13/2013-एस.एस.-I]

अजय मलिक, अवर सचिव

New Delhi, the 6th July, 2017

S.O. 1635.—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/establishments of BEMIL, Ltd., (all offices) from the operation of the said Act. The exemption shall be effective for a period of one year from the date of issue of notification.

2. The above exemption is subject to the following conditions namely:-

- (1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees';
- (2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;
- (3) The contributions for the exempted period, if already paid, shall not be refundable;
- (4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of:-
 - (i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or
 - (ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:
 - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

- (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
 - (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,
 - (e) exercise such other powers as may be prescribed.
- (6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/13/2013-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 6 जुलाई, 2017

का.आ. 1636.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा राष्ट्रीय केमिकल एंड फर्टिलाइजर लिमिटेड (ट्रॉम्बे यूनिट), मुंबई के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, अधिसूचना जारी होने की तारीख से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;
 - (i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अथवा
 - (ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
 - (iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

- (iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:-
- (क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा
- (ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
- (ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
- (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
- (ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/02/2013-एस.एस.-I]

अजय मलिक, अवर सचिव

New Delhi, the 6th July, 2017

S.O. 1636.—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/establishments of Rashtriya Chemical & Fertilizer Limited (Trombay Unit), Mumbai from the operation of the said Act. The exemption shall be effective for a period of one year from the date of issue of notification.

2. The above exemption is subject to the following conditions namely:—

- (1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees;
- (2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;
- (3) The contributions for the exempted period, if already paid, shall not be refundable;
- (4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of:-
 - (i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or

- (ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
- (iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
- (iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:
 - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
 - (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,
 - (e) exercise such other powers as may be prescribed.

(6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/02/2013-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 6 जुलाई, 2017

का.आ. 1637.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा हिंदुस्तान कीटनाशकों लिमिटेड, उद्योगमंदल, एर्नाकुलम के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, अधिसूचना जारी होने की तारीख से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;

- (i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अथवा
 - (ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
 - (iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या
 - (iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:-
 - (क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है ; अथवा
 - (ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
 - (ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
 - (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
 - (ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना ।
6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/12/2013-एस.एस.-I]

अजय मलिक, अवर सचिव

New Delhi, the 6th July, 2017

S.O. 1637.—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/establishments of Hindustan Insecticides Ltd., Udhogmandal, Ernakulam from the operation of the said Act. The exemption shall be effective for a period of one year from the date of issue of notification.

2. The above exemption is subject to the following conditions namely:-

- (1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees';

- (2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;
- (3) The contributions for the exempted period, if already paid, shall not be refundable;
- (4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of:-
 - (i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or
 - (ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:
 - (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
 - (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,
 - (e) exercise such other powers as may be prescribed.
- (6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/12/2013-SS-I]

AJAY MALIK, Under Secy.